



M E M O R A N D U M

TO: Mayor, Vice-Mayor and City Commissioners
COPIES: Frances Robustelli, City Manager; Brandon Berry; Denise Sanderson;
Jennifer Daunch; Peyt Dewar; Kristin Coman; Amber LaRowe
FROM: Gretchen R. H. ("Becky") Vose, Esq., City Attorney
DATE: January 23, 2025
SUBJECT: Proposed New Noise Ordinance – Plainly audible at a distance standard

Some questions have been raised as to the constitutionality of the "plainly audible" at a distance standard for a noise ordinance based upon the Florida Supreme Court case of *State v. Catalano*, 104 So.2d 1069 (Fla. 2012). The confusion is based on a mixed opinion by the Florida Supreme Court in that case which was a challenge to a Florida Statute that made it "unlawful for any person operating a motor vehicle ... to operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument ... so that the sound is ... plainly audible at a distance of 25 feet or more from the motor vehicle." The statute exempted "motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices." The ultimate decision of the Florida Supreme Court was that the statute was unconstitutional; however, the court made it clear, that the basis for the finding of unconstitutionality was based on the "content based" exception in the statute for noise with a business or political content. The Florida Supreme Court also made it clear that the noise standard of "plainly audible" at a distance was a valid (and not unconstitutional) standard for noise regulations.

In *Catalano*, the Florida Supreme Court held that the "plainly audible" standard in FS Sec. 316.3045(1)(a) "is not unconstitutionally vague," but the court made it clear that the statute being challenged "is unconstitutionally overbroad and an impermissible content-based restriction." *Catalano* at 1075. The content based restriction was the exception and preference for noise related to business and politics. This content based exception in the statute led the court in *Catalano* to find the statute to be overbroad due to the restrictions being content based, and therefore subject to a "strict scrutiny" standard of review.

Importantly, the Court specifically held that the "plainly audible" standard was *not* unconstitutionally vague and was a valid method of putting (non-content based) restrictions on noise. The Court opined that:

"Catalano and Schermerhorn argue that the "plainly audible" language is unconstitutionally vague on its face because whether a police officer can hear amplified sound beyond twenty-five feet is necessarily subject to each particular police officer's auditory faculties, leading to arbitrary enforcement based on whether a police officer personally finds the amplified sound disturbing. In short, Catalano and Schermerhorn argue that citizens cannot conform their behavior to the law because of uncertainty over whether the music in their vehicles would be plainly audible beyond twenty-five feet to a particular police officer.

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To withstand constitutional scrutiny, however, statutes do not have to set determinate standards or provide mathematical certainty. See *Grayned v. City of Rockford*, 408 U.S. 104, 110, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (observing that we cannot expect mathematical certainty from the use of words); *Broadrick v. Oklahoma*, 413 U.S. 601, 608, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973) (explaining that the English language has limitations with respect to being both specific and brief, but noting that statutes must set out standards in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest). Applying the rationale from *Grayned* and *Broadrick*, **the “plainly audible” standard provides persons of common intelligence and understanding adequate notice of the proscribed conduct:** individuals operating or occupying a motor vehicle on a street or highway in Florida cannot amplify sound so that it is heard beyond twenty-five feet from the vehicle. **Although it is true that each police officer may have different auditory sensitivities, the “plainly audible” beyond twenty-five feet standard provides fair warning of the prohibited conduct and provides an objective guideline—distance—to prevent arbitrary and discriminatory enforcement so that basic policy matters are not delegated to policemen, judges, and juries for resolution on an ad hoc and subjective basis.** See *Grayned*, 408 U.S. at 108–09. **This is not a standard that calls for police officers to judge whether sound is excessive, raucous, disturbing, or offensive; if the officer can hear the amplified sound more than twenty-five feet from its source, the individual has violated the statute.”** [Emphasis supplied.]

The court continued by listing numerous court decisions finding the “plainly audible” at a distance to be constitutional as follows:

“Indeed, several jurisdictions both in Florida and around the country have upheld similar statutes in the face of vagueness challenges. *See, e.g., Montgomery v. State*, 69 So.3d 1023, 1032 (Fla. 5th DCA 2011) (holding section 316.3045(1)(a) is not unconstitutionally vague, but finding the statute unconstitutionally overbroad as an impermissible content-based restriction); *Davis v. State*, 710 So.2d 635, 636 (Fla. 5th DCA 1998) (upholding pre-2005 amendment version of section 316.3045(1)(a), which required that amplified sound be plainly audible more than one-hundred feet from the vehicle, as not unconstitutionally vague); *State v. Medel*, 139 Idaho 498, 80 P.3d 1099, 1103 (Ct.App. 2003) (upholding ordinance as not unconstitutionally vague where it prohibited operating a vehicle's sound system so that it is audible at a distance of fifty feet); *Davis v. State*, 272 Ga. 818, 537 S.E.2d 327, 328-29 (2000) (finding that a statute which prohibits amplified sound from a vehicle which is “plainly audible” at 100 feet is not vague and stating that it would belie credibility to find that persons of ordinary intelligence do not know what it means for amplified sound to be “plainly audible” at a distance greater than one-hundred feet); *People v. Hodges*, 70 Cal.App.4th 1348, 83 Cal.Rptr.2d 619, 622 (1999) (ordinance prohibiting a vehicle's sound system from operating where

it could be heard twenty-five feet away not unconstitutionally vague); Moore v. City of Montgomery, 720 So.2d 1030, 1032 (Ala.Crim.App.1998) (holding ordinance that prohibited sound audible five feet from vehicle not unconstitutionally vague and stating that finding otherwise belies credibility); Holland v. City of Tacoma, 90 Wash.App. 533, 954 P.2d 290, 295 (1998), review denied, 136 1077*1077 Wash.2d 1015, 966 P.2d 1278 (1998) (finding ordinance not unconstitutionally vague as the court noted that a person of ordinary intelligence knows what is meant by prohibition of sound that is audible more than fifty feet away); Com. v. Scott, 878 A.2d 874, 878-79 (Pa.Super.Ct.2005). Additionally, the United States Supreme Court has rejected vagueness challenges to arguably more subjective terms. See Kovacs v. Cooper, 336 U.S. 77, 78, 69 S.Ct. 448, 93 L.Ed. 513 (1949) (upholding constitutionality of a sound ordinance that prohibited the use of a sound-generating instrument that produces loud and raucous sound on vehicles); Grayned, 408 U.S. at 107-08, 92 S.Ct. 2294 (upholding constitutionality of a sound ordinance that prohibited sound that disturbed or tended to disturb the peace). **Thus, we find that the "plainly audible" standard is not unconstitutionally vague.** We now discuss whether the statute is unconstitutionally overbroad or an unreasonable restriction on the freedom of expression.” [Emphasis supplied.]

Again, the unconstitutional finding in *Catalano* related to the exemptions for political or commercial speech. The court held that:

“The regulation, however, treats commercial and political speech more favorably than noncommercial speech. Additionally, the statute does not have to intentionally suppress certain ideas to be constitutionally suspect as a content-based restriction. See City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 429, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993) 1079*1079 (citing Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 117, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991)). Regardless of the intent of the Legislature, section 316.3045 is a sweeping ban on amplified sound that can be heard beyond twenty-five feet of a motor vehicle, unless that sound comes from a business or political vehicle, which presumably uses sound-making devices for the purpose of expressing commercial and political viewpoints. For instance, business and political vehicles may amplify commercial or political speech at any volume, whereas an individual traversing the highways for pleasure would be issued a citation for listening to any type of sound, whether it is religious advocacy or music, too loudly. **Thus, this statute is content based because it does not apply equally to music, political speech, and advertising.** See Discovery Network, 507 U.S. at 428-29, 113 S.Ct. 1505 (stating that a sound ordinance is permissible if it applies equally to music, political speech, and advertising). Accordingly, this statute is subject to the strict scrutiny analysis to determine whether it is a reasonable restriction or unconstitutionally overbroad.

“This right, nevertheless, is subject to reasonable limitations on the time, place, and manner of the protected speech. Limitations are reasonable if they are “justified **without reference to the content of the regulated speech**, ... narrowly tailored to serve a significant governmental interest, and ... leave open ample alternative channels for communication of the information.” Ward, 491 U.S. at 791, 109 S.Ct. 2746. **If the time, place, and manner of the limitations are content based, a strict standard of scrutiny is applied.** See, e.g., Simmons v. State, 944 So.2d 317, 323 (Fla.2006).” [Emphasis supplied.]

The City of St. Pete Beach currently has noise ordinances that essentially use two different standards.

The first is based on decibel readings (Sec. 46-132). Such readings must be taken by calibrated sound level meters by users who are certified to use the meters. It is problematic to take decibel readings in the “real world” since based on the ordinance (and based on standards that would be imposed regardless of the requirements of the ordinance) “[t]o determine the sound level from the sound source to be measured, the background sound shall be subtracted from the ambient sound level.” Therefore, somehow the person measuring the sound would have to take two measurements, one of the background noise, and the second of the noise from the source to be measured. Considering that background noise includes fluctuating traffic noise, noise from passing boats, noise from wind and waves, etc., the measurement of “background noise” alone is problematic. And how do you stop the noise that you intend to measure (such as the noise from a loud band or a stereo system) in order to measure the “background noise”? It is not surprising that decibel readings are an inconvenient and difficult method of measuring for a noise violation.

The second standard in the City’s current noise ordinances (Sec. 46-133) is the “loud and raucous” noise standard. Under that ordinance, “[l]oud and raucous shall mean any sound that, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities.” That ordinance also provides a specific list of

Although there is case law supporting the “loud and raucous” standard, it is understandable that there could certainly be differences of opinions as to what sounds constitute “loud and raucous” noise.

The proposed noise ordinance uses a common sense, constitutional method of addressing noise received in residential areas of the city. The issue came to my attention after becoming involved with the Red, White and Booze lawsuit and learning that although noise issues seriously plagued the residential areas across the water from that establishment for a substantial period of time, there were no “noise violations” that were actually issued against the business.

The ordinance that I have proposed in St. Pete Beach is almost identical to the noise ordinance that was adopted by the City of Cocoa Beach in the summer of 2023. That city already had other methods of enforcing noise problems, but those had not been effective to control noise in the city,

particularly noise from bars that was disruptive to residents in residential areas. When Cocoa Beach adopted the plainly audible at a distance standard, the problems were quickly resolved. The businesses that were causing the problems learned quickly that they could be caught and cited and they came into compliance. In particular, the bars made efforts to keep the music within their establishments and not allow it to carry out into residential areas. Today I called the Chief of Police in Cocoa Beach and asked for an update as to noise issues, and the Chief confirmed that the new ordinance had resolved what had been serious issues.

If anyone has any questions or concerns about this proposed ordinance or this legal opinion, please contact me.

Ex_B_Noise_Ordinance_01282025 CC Agenda Packet-1

CITY COMMISSION MEETING CITY OF ST. PETE BEACH

Agenda Report

Action Request:

Consider adoption of additional clearly audible, nuisance based standard in the noise ordinance.

Strategic Objective:

To apply a common sense, objective and easy to apply additional third standard for noise violations.

Date:

January 28, 2025

Prepared By:

Becky Vose, City Attorney's Office

Summary of Issue:

The City currently has two standards for noise violations that have not been effective in controlling excessive noise in the City.

This ordinance provides a legally defensible and easy to apply additional third standard that is a nuisance-based clearly audible standard to curb excessive noise in the city.

Funding:

No additional funding should be necessary for this amendment.

Attachments:

Copy of proposed Ordinance.

Ordinance 2025-05

AN ORDINANCE OF THE CITY OF ST. PETE BEACH, FLORIDA CREATING ADDITIONAL NEW NUISANCE NOISE CONTROL PROVISIONS IN CODE CHAPTER 46 ENVIRONMENT, CREATING NEW ARTICLE VI NOISE PLAINLY AUDIBLE AT A DISTANCE IN A RESIDENTIAL LOCATION, CREATING SECTION 46-160 AUTHORITY AND SCOPE, CREATING SECTION 46-161 FINDINGS OF FACT, CREATING SECTION 46-162 EXCESSIVE NOISE DECLARED A VIOLATION AND THE MEANS AND METHOD OF DETERMINING EXCESSIVE NOISE AND DEFINITION OF RESIDENTIAL LOCATION, CREATING SECTION 46-163 DECLARATION OF PUBLIC NUISANCE AND DECLARATION OF IRREPARABLE AND IRREVERSIBLE NATURE OF NOISE VIOLATIONS, CREATING SECTION 46-164 ENFORCEMENT, CREATING SECTION 46-165 CONSTRUCTION OF ARTICLE, CREATING SECTION 46-166 EXCESSIVE NOISE DETERMINATION UNDER PLAINLY AUDIBLE AT A DISTANCE IN A RESIDENTIAL LOCATION, MEANS AND METHOD, CREATING SECTION 46-167 EXEMPTIONS, CREATING SECTION 46-168 SEVERABILITY; PROVIDING FOR CODIFICATION; CONFLICTS; SEVERABILITY; CORRECTION OF SCRIVENER'S ERROR; CONSTRUCTION; PUBLICATION; AND AN EFFECTIVE DATE.

WHEREAS, it is the public policy of the city that every person is entitled to noise levels that are not detrimental to the life, health, comfort and peace of the city's residents and visitors, and to be free of excessive noise that interferes with the enjoyment of property in the city by its residents and its visitors

WHEREAS, residents of the city have the right to have peace and quiet in and about their residences, and be free from excessive noise, particularly during times and days when many residents typically relax and sleep.

WHEREAS, it is recognized that excessive noise potentially lowers the value of nearby residences.

WHEREAS, the City Commission finds these amendments to assist in the preservation and maintenance the public health, safety, and welfare.

WHEREAS, a business impact estimate pursuant to Florida Statute 166.041(4) has been prepared.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH FLORIDA, HEREBY ORDAINS:

SECTION 1. Recitals. The above recitals (“Whereas” clauses) are hereby adopted as legislative findings, purpose and intent of the City Commission.

SECTION 2. The Code of the City of St Pete Beach is amended as shown in EXHIBIT A to this Ordinance.

SECTION 3. Codification. This Ordinance shall be codified in the Code of the City of St. Pete Beach.

SECTION 4. Conflicts. All ordinances or parts of ordinances, in conflict herewith are hereby repealed to the extent of any conflict with the Ordinance.

SECTION 5. Severability. In the event that any word(s), phrase(s), portion(s), sub-subsection(s), subsection(s), or section(s) of this article, is contrary to law, or against public policy, or shall for any reason whatsoever held to be invalid, illegal or unconstitutional, by any court of competent jurisdiction, such word(s), phrase(s), portion(s), sub-subsection(s), subsection(s), or section(s) of this article shall be null and void, and shall be deemed severed, and a separate, distinct, and independent provision from the remaining provisions of this article, and such holding shall in no manner affect the validity of the remaining words, phrases, portions, sub-subsections, subsections, or sections of this article, which shall remain in full force and effect. This article shall be construed in a manner to accomplish, to the greatest extent legally possible, the purposes of this article as expressed herein. Further, specifically, and without limitation, in the event any portion of this article, expressed or implied, causes this article or any portion thereof, to be determined to be a content-based regulation rather than a content-neutral regulation, then such portion of this article causing such determination shall be deemed severed, and it is declared the legislative intent of the city commission that the balance of this article would have been enacted absent such portion

SECTION 6. Scrivener’s Error. The City Attorney may correct scrivener’s errors found in this Ordinance by filing a corrected copy of this Ordinance with the City Clerk.

SECTION 7. Construction. This Ordinance is to be liberally construed to accomplish its objectives.

SECTION 8. Publication. This Ordinance shall be published in accordance with the requirements of law.

SECTION 9. Effective Date. This ordinance shall take effect immediately upon adoption.

Words ~~stricken~~ through shall be deleted. Words underscored constitute the amendment proposed. The symbol *** constitutes code sections not shown for purposes of brevity. Remaining provisions are now in effect and remain unchanged.

FIRST READING: _____
PUBLISHED: _____
SECOND READING: _____
PUBLIC HEARING: _____

CITY COMMISSION, CITY OF ST. PETE
BEACH, FLORIDA.

Adrian Petrila, Mayor

I, Amber LaRowe, City Clerk of the City of St. Pete Beach, Florida, do hereby certify that the foregoing Ordinance was duly adopted in accordance with the provisions of applicable law this _____ day of _____, 2025.

Amber LaRowe, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

City Attorney

Words ~~stricken~~ through shall be deleted. Words underscored constitute the amendment proposed. The symbol *** constitutes code sections not shown for purposes of brevity. Remaining provisions are now in effect and remain unchanged.

EXHIBIT A

ARTICLE VI – NOISE PLAINLY AUDIBLE AT A DISTANCE IN A RESIDENTIAL LOCATION

Sec. 46-160 Authority and purpose/Intent.

This article is enacted under the home rule power of the City of St. Pete Beach in the interest of the health, peace, safety and general welfare. The purpose of this article is to regulate and reduce the noises within the city in order to preserve, protect and promote the public health, peace, comfort, safety and welfare, and the peace and quiet and quality of life of the inhabitants, both residents and visitors alike, of the city, prevent injury to human and animal life, preserve property values, foster the peace and comfort of the city's inhabitants, and facilitate the enjoyment of the natural attractions of the city. It is not the intent of this Article to negate or alter the provisions of other sections of this code of ordinances, including, but not limited to, Article IV, Noise, of Chapter 46, Environment, and Sec. 98-1, Hours for construction work restricted.

Sec. 46-161. Findings of facts.

Based on information and communications from city residents to city staff and city commissioners, the practical first-hand experience and observations of city commissioners, common sense deductions of city commissioners based on long term experiences in St. Pete Beach, information learned by city commissioners from various residents, and from research concerning the adverse health consequences of excessive noise, the city commission finds, recognizes, determines and declares:

- (1) It is the public policy of the city that every person is entitled to noise levels that are not detrimental to the life, health, comfort and peace of the city's residents and visitors, and to be free of excessive noise that interferes with the enjoyment of property in the city by its residents and its visitors.
- (2) Scholarly research has shown that exposure to excessive noise can have serious and long term negative physical and psychological health consequences which can include, but are not limited to, hearing impairment, hypertension, heart disease, sleep disturbance, changes in the immune system and increased incidence of diabetes. Research has also shown that adverse cardiovascular effects occur from chronic exposure to noise due to the sympathetic nervous system's inability to habituate. The sympathetic nervous system maintains lighter stages of sleep when the body is exposed to noise, which does not allow blood pressure to follow the normal rise and fall cycle of an undisturbed circadian rhythm.
- (3) Stress from time spent around elevated noise levels has been linked with increased accident rates and aggression and other anti-social behaviors.
- (4) It is recognized that excessive noise potentially lowers the value of nearby residences.

Words ~~stricken~~ through shall be deleted. Words underscored constitute the amendment proposed. The symbol *** constitutes code sections not shown for purposes of brevity. Remaining provisions are now in effect and remain unchanged.

-
- (5) Residents of the city have the right to have peace and quiet in and about their residences as well as in public areas, and be free from excessive noise, particularly during times and days when many residents typically relax and sleep.
 - (6) The city recognizes the importance of the provisions of the Florida Constitution, Art. 2, Sec. 7, relating to the abatement of excessive and unnecessary noise.
 - (7) It is hereby declared that the making, creation or maintenance of excessive noise within the city is a menace to the public health, comfort, safety, welfare, peace and the quality of life and prosperity of the people of the city. The provisions and prohibitions hereinafter contained and enacted are the minimum deemed to be necessary to protect the health, safety and welfare of the city and its residents and visitors.
 - (8) It is recognized that due to the intermittent character of some violations of this article, traditional methods of code enforcement with running fines, or citations which could merely be considered a cost of doing business by some commercial establishments, may not be effective means of deterrence of violations of this article. Therefore, it is found that in some cases, it is reasonable and appropriate, at the determination of the city commission, to provide for enforcement of this article through a request for equitable relief in the circuit court.

Sec. 46-162. Excessive noise declared a violation, the means and method of determining excessive noise and definition of residential location.

It is a violation of this code of ordinances for any person within the city to make, continue, cause, or allow to be made or continued, any excessive noise as more specifically described herein. This article sets forth a plainly audible at a distance in a residential location method by which noise can be determined to be "excessive noise" and therefore a violation of this code of ordinances. Residential location shall mean any location within the city limits of St. Pete Beach that has a zoning designation of RU-1, RU-2, or RLM-1, or which is the location of a single family residence, residential duplex/triplex/fourplex, multifamily development, residential condominium or cooperative apartment, or residential apartment.

Sec. 46-163. Declaration of public nuisance, and Declaration of irreparable and irreversible nature of noise violations.

It is hereby found and determined that excessive noise in the City of St. Pete Beach is a public nuisance, subject to injunction and abatement by a court of competent jurisdiction. It is also hereby found and determined that excessive noise in the City of St. Pete Beach is irreparable and irreversible in nature so as to justify enhanced fines and penalties.

Sec. 46-164. Enforcement.

Violations of this article may be investigated by any law enforcement officer and/or any St. Pete Beach code officer duly appointed by the city manager, (herein "investigating officer") and may be enforced through any, some, or all of the following:

- (a) A suit brought by the city in the circuit court to restrain, enjoin, or prevent a violation of this article.
- (b) Citation enforcement with the fines for such violations as set by the city commission.
- (c) Special magistrate proceedings.
- (d) Any other legal proceedings deemed appropriate by the city commission.

Sec. 46-165. Construction of article.

This article shall be liberally construed to accomplish its purpose of regulating excessive noise, protecting the character of St. Pete Beach, the health, safety, and general welfare of its residents and visitors, and the preservation of the quality of life in St. Pete Beach, and the quiet enjoyment by St. Pete Beach's residents of their residential property.

Sec. 46-166. Excessive noise determination under plainly audible at a distance in a residential location means, and method.

- (a) **Investigation.** Either in response to a complaint, or upon an investigating officer becoming otherwise aware of an alleged violation of this chapter, such investigating officer may proceed to investigate the alleged violation by the plainly audible at a distance in a residential location means or method of determining excessive noise as described hereinafter.
- (b) **Noise from an Originating Property (not on a dock over water body).** If the excessive noise originates in a location on land (and is not originating from a dock over a water body), the investigating officer shall determine the source of the noise being investigated (which location can be in any zoning category) and shall reasonably determine the relevant property lines of the real property that is the source of the noise being investigated (the "Originating Property"). The investigating officer may then, through physical measurement or other reliable source, determine a location which is both two hundred (200) feet or more from the property line of the Originating Property that is closest to the residential property (the "Receiving Property"). The investigating officer shall then, at that Receiving Property, use the officer's normal hearing faculties, not enhanced by any mechanical or medical device, such as a hearing aid, to determine whether the noise being investigated is plainly audible. As used herein, "property line" shall mean an imaginary line along the surface of land, and its vertical plane extension, which separates the real property owned, rented, controlled or leased by a person or entity from real property owned, rented, controlled or leased by another person, entity, or government. Where an Originating Property extends into a water body, the applicable property line abutting a water line of the Originating Property shall be the imaginary line, and its vertical plane extension, separating where the dry land touches the body of water, so that submerged lands, whether below dockage or not, and regardless of ownership of the submerged lands

or dockage, shall not be considered part of the Originating Property for purposes of making the two hundred (200) foot measurement.

- (c) **Noise from an Originating Location on a Dock over a water body.** If the excessive noise originates from a location that is on a dock over a water body, the investigating officer shall determine the source of the noise being investigated (which location can be in any zoning category, or no zoning category) and shall reasonably determine the distance of the dock (the "Originating Location") from the Receiving Property. The investigating officer may then, through physical measurement or other reliable source, determine a location which is both two hundred (200) feet or more from the Originating Location and is a residential property (the "Receiving Property"). The investigating officer shall then, at that Receiving Property, use the officer's normal hearing faculties, not enhanced by any mechanical or medical device, such as a hearing aid, to determine whether the noise being investigated is plainly audible.
- (d) **Means of Detection.** Investigating officers shall make a determination as to whether a noise is plainly audible, by using the following standards:
 - (1) The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.
 - (2) The officer must have a direct line of hearing, to the area from which the noise is coming so that the officer can readily identify the source of the offending noise.
 - (3) The officer need not determine the particular words or phrases being produced or the name of any song or artist producing the noise. For example, the detection of a rhythmic bass reverberating type noise is sufficient to constitute a plainly audible noise.
- (e) **Prohibition.** No person shall permit, cause, allow, or create noise that is plainly audible in a residential location when that residential location is located no less than two hundred (200) feet from the Originating Location or the closest property line of the Originating Property.

Sec. 46-167. Exemptions.

The following shall be exempt from the definition of excessive noise contained in this article:

- (1) Yard and building maintenance machinery, equipment and tools operated between 7:00 a.m. and 8:00 p.m. when operated with all manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition;
- (2) Construction operations between 7:00 a.m. and 8:00 p.m. Monday through Saturday, for which building permits have been issued, or for construction operations not requiring permits due to the scope of work or ownership of the project; provided all equipment used in the construction operations is operated in accordance with the manufacturer's specifications and with all standard equipment, manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition;
- (3) Electrical or mechanical equipment in proper operating condition, installed and designed for the type of property or use upon which it is placed, providing air conditioning, heat, ventilation, plumbing or electrical service to the property on which it is placed;

- (4) Emergency generators used only during a loss of electrical power for any cause other than non-payment of utility services or failure to obtain or connect to available electrical service;
- (5) Aircraft operated in conformity with, or pursuant to, federal law, federal air regulations and air traffic control instructions;
- (6) Operations of interstate motor and rail carriers, to the extent that local regulation of noise levels of such vehicles has been preempted by the Noise Control Act of 1972 (42 U.S.C. § 4901 et seq.) or other applicable federal laws or regulations;
- (7) Operation of motor vehicles to the extent regulated by Section 316.293 Florida Statutes;
- (8) Sanitation operations including the unloading, emptying or collection of any waste or recycling container;
- (9) Noises created by vehicles or equipment owned or operated by governmental entities including the City of St. Pete Beach, Pinellas County, Pinellas County Public Schools, the State of Florida, the Federal Government, or their designees, when such vehicles or equipment are engaged in emergency operations, including operations during or following storms, accidents, or other catastrophes;
- (10) Noises created by vehicles or equipment owned or operated by governmental entities including the City of St. Pete Beach, Pinellas County, Pinellas County Public Schools, the State of Florida, the Federal Government, or their designees, when such vehicles or equipment are engaged in construction operations; and
- (11) Noises during times and/or at locations as specifically designated by resolution of the city commission upon request to the city commission and upon good cause shown.

Sec. 46-168. Severability.

In the event that any word(s), phrase(s), portion(s), sub-subsection(s), subsection(s), or section(s) of this article, is contrary to law, or against public policy, or shall for any reason whatsoever held to be invalid, illegal or unconstitutional, by any court of competent jurisdiction, such word(s), phrase(s), portion(s), sub-subsection(s), subsection(s), or section(s) of this article shall be null and void, and shall be deemed severed, and a separate, distinct, and independent provision from the remaining provisions of this article, and such holding shall in no manner affect the validity of the remaining words, phrases, portions, sub-subsections, subsections, or sections of this article, which shall remain in full force and effect. This article shall be construed in a manner to accomplish, to the greatest extent legally possible, the purposes of this article as expressed herein. Further, specifically, and without limitation, in the event any portion of this article, expressed or implied, causes this article or any portion thereof, to be determined to be a content-based regulation rather than a content-neutral regulation, then such portion of this article causing such determination shall be deemed severed, and it is declared the legislative intent of the city commission that the balance of this article would have been enacted absent such portion.

M E M O R A N D U M

TO: Mayor, Vice-Mayor and City Commissioners
COPIES: Frances Robustelli, City Manager; Brandon Berry; Denise Sanderson;
Jennifer Daunch; Peyt Dewar; Kristin Coman; Amber LaRowe
FROM: Gretchen R. H. ("Becky") Vose, Esq., City Attorney
DATE: January 22, 2025
SUBJECT: Proposed New Noise Ordinance – Plainly audible at a distance standard

Some questions have been raised as to the constitutionality of the "plainly audible" at a distance standard for a noise ordinance based upon the Florida Supreme Court case of *State v. Catalano*, 104 So.2d 1069 (Fla. 2012). The confusion is based on a mixed opinion by the Florida Supreme Court in that case which was a challenge to a Florida Statute that made it "unlawful for any person operating a motor vehicle ... to operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument ... so that the sound is ... plainly audible at a distance of 25 feet or more from the motor vehicle." The statute exempted "motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices." The ultimate decision of the Florida Supreme Court was that the statute was unconstitutional; however, the court made it clear, that the basis for the finding of unconstitutionality was based on the "content based" exception in the statute for noise with a business or political content. The Florida Supreme Court also made it clear that the noise standard of "plainly audible" at a distance was a valid (and not unconstitutional) standard for noise regulations.

In *Catalano*, the Florida Supreme Court held that the "plainly audible" standard in FS Sec. 316.3045(1)(a) "is not unconstitutionally vague," but the court made it clear that the statute being challenged "is unconstitutionally overbroad and an impermissible content-based restriction." *Catalano* at 1075. The content based restriction was the exception and preference for noise related to business and politics. This content based exception in the statute led the court in *Catalano* to find the statute to be overbroad due to the restrictions being content based, and therefore subject to a "strict scrutiny" standard of review.

Importantly, the Court specifically held that the "plainly audible" standard was *not* unconstitutionally vague and was a valid method of putting (non-content based) restrictions on noise. The Court opined that:

"Indeed, several jurisdictions both in Florida and around the country have upheld similar statutes in the face of vagueness challenges. *See, e.g., Montgomery v. State*, 69 So.3d 1023, 1032 (Fla. 5th DCA 2011) (holding section 316.3045(1)(a) is not unconstitutionally vague, but finding the statute unconstitutionally overbroad as an impermissible content-based restriction); *Davis v. State*, 710 So.2d 635, 636 (Fla. 5th DCA 1998) (upholding pre-2005 amendment version of section 316.3045(1)(a), which required that amplified sound be plainly audible more than one-hundred feet from the vehicle, as not unconstitutionally vague); *State v.*

COUNSEL TO EXTRAORDINARY GOVERNMENTS & LEADERS THROUGHOUT FLORIDA SINCE 1973

Medel, 139 Idaho 498, 80 P.3d 1099, 1103 (Ct.App. 2003) (upholding ordinance as not unconstitutionally vague where it prohibited operating a vehicle's sound system so that it is audible at a distance of fifty feet); Davis v. State, 272 Ga. 818, 537 S.E.2d 327, 328-29 (2000) (finding that a statute which prohibits amplified sound from a vehicle which is "plainly audible" at 100 feet is not vague and stating that it would belie credibility to find that persons of ordinary intelligence do not know what it means for amplified sound to be "plainly audible" at a distance greater than one-hundred feet); People v. Hodges, 70 Cal.App.4th 1348, 83 Cal.Rptr.2d 619, 622 (1999) (ordinance prohibiting a vehicle's sound system from operating where it could be heard twenty-five feet away not unconstitutionally vague); Moore v. City of Montgomery, 720 So.2d 1030, 1032 (Ala.Crim.App.1998) (holding ordinance that prohibited sound audible five feet from vehicle not unconstitutionally vague and stating that finding otherwise belies credibility); Holland v. City of Tacoma, 90 Wash.App. 533, 954 P.2d 290, 295 (1998), review denied, 136 1077*1077 Wash.2d 1015, 966 P.2d 1278 (1998) (finding ordinance not unconstitutionally vague as the court noted that a person of ordinary intelligence knows what is meant by prohibition of sound that is audible more than fifty feet away); Com. v. Scott, 878 A.2d 874, 878-79 (Pa.Super.Ct.2005). Additionally, the United States Supreme Court has rejected vagueness challenges to arguably more subjective terms. See Kovacs v. Cooper, 336 U.S. 77, 78, 69 S.Ct. 448, 93 L.Ed. 513 (1949) (upholding constitutionality of a sound ordinance that prohibited the use of a sound-generating instrument that produces loud and raucous sound on vehicles); Grayned, 408 U.S. at 107-08, 92 S.Ct. 2294 (upholding constitutionality of a sound ordinance that prohibited sound that disturbed or tended to disturb the peace). **Thus, we find that the "plainly audible" standard is not unconstitutionally vague.** We now discuss whether the statute is unconstitutionally overbroad or an unreasonable restriction on the freedom of expression." [Emphasis supplied.]

Again, the negative finding in *Catalano* related to the exemptions for political or commercial speech. The court held that:

"The regulation, however, treats commercial and political speech more favorably than noncommercial speech. Additionally, the statute does not have to intentionally suppress certain ideas to be constitutionally suspect as a content-based restriction. See City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 429, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993) 1079*1079 (citing Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 117, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991)). Regardless of the intent of the Legislature, section 316.3045 is a sweeping ban on amplified sound that can be heard beyond twenty-five feet of a motor vehicle, unless that sound comes from a business or political vehicle, which presumably uses sound-making devices for the purpose of expressing commercial and political viewpoints. For instance, business and political vehicles may amplify commercial or political speech at any volume, whereas an individual traversing the

highways for pleasure would be issued a citation for listening to any type of sound, whether it is religious advocacy or music, too loudly. **Thus, this statute is content based because it does not apply equally to music, political speech, and advertising.** See *Discovery Network*, 507 U.S. at 428-29, 113 S.Ct. 1505 (stating that **a sound ordinance is permissible if it applies equally to music, political speech, and advertising**). Accordingly, this statute is subject to the strict scrutiny analysis to determine whether it is a reasonable restriction or unconstitutionally overbroad.

“This right, nevertheless, is subject to reasonable limitations on the time, place, and manner of the protected speech. Limitations are reasonable if they are “justified **without reference to the content of the regulated speech**, ... narrowly tailored to serve a significant governmental interest, and ... leave open ample alternative channels for communication of the information.” *Ward*, 491 U.S. at 791, 109 S.Ct. 2746. **If the time, place, and manner of the limitations are content based, a strict standard of scrutiny is applied.** See, e.g., *Simmons v. State*, 944 So.2d 317, 323 (Fla.2006).” [Emphasis supplied.]

The City of St. Pete Beach currently has noise ordinances that essentially use two different standards.

The first is based on decibel readings (Sec. 46-132). Such readings must be taken by calibrated sound level meters by users who are certified to use the meters. It is problematic to take decibel readings in the “real world” since based on the ordinance (and based on standards that would be imposed regardless of the requirements of the ordinance) “[t]o determine the sound level from the sound source to be measured, the background sound shall be subtracted from the ambient sound level.” Therefore, somehow the person measuring the sound would have to take two measurements, one of the background noise, and the second of the noise from the source to be measured. Considering that background noise includes fluctuating traffic noise, noise from passing boats, noise from wind and waves, etc., the measurement of “background noise” alone is problematic. And how do you stop the noise that you intend to measure (such as the noise from a loud band or a stereo system) in order to measure the “background noise”? It is not surprising that decibel readings are an inconvenient and difficult method of measuring for a noise violation.

The second standard in the City’s current noise ordinances (Sec. 46-133) is the “loud and raucous” noise standard. Under that ordinance, “[l]oud and raucous shall mean any sound that, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities.” Although there is case law supporting this standard, it is understandable that there could certainly be differences of opinions as to what sounds constitute “loud and raucous” noise.

The proposed noise ordinance uses a common sense, constitutional method of addressing noise received in residential areas of the city. The issue came to my attention after becoming involved with the Red, White and Booze lawsuit and learning that although noise issues seriously plagued

the residential areas across the water from that establishment for a substantial period of time, there were no “noise violations” that were actually issued against the business.

The ordinance that I have proposed in St. Pete Beach is almost identical to the noise ordinance that was adopted by the City of Cocoa Beach in the summer of 2023. That city already had other methods of enforcing noise problems, but those had not been effective to control noise in the city, particularly noise from bars that was disruptive to residents in residential areas. When Cocoa Beach adopted the plainly audible at a distance standard, the problems were quickly resolved. The businesses that were causing the problems learned quickly that they could be caught and cited and they came into compliance. In particular, the bars made efforts to keep the music within their establishments and not allow it to carry out into residential areas. Today I called the Chief of Police in Cocoa Beach and asked for an update as to noise issues, and the Chief confirmed that the new ordinance had resolved what had been serious issues.

If anyone has any questions or concerns about this proposed ordinance, please contact me.

Exhibit C:
ORIGINAL PUBLIC
RECORD REQUEST
PRR2025-22
Feb. 2, 2025

* Only Cover Letters To
Clerk Provided For Brevity,
copies to all others
available on request.

Amber LaRowe, City Clerk
City Hall, City Clerk's Office
155 Corey Avenue
St. Pete Beach, FL 33706
February 2, 2025
CERTIFIED MAIL: 7020 2450 0001 0300 9908

PLEASE CORRESPOND TO:
GEOFFREY CAPUTO
4604 49TH ST. N #140
KENNETH CITY, FL. 33709
FLORIDAREPUBLIC@GMAIL.COM

RE: Public Records Request for Documentation Supporting Noise Ordinance Justification

Notice to Principal is Notice to Agents and Notice to Agents is Notice to Principal; Moreover, the enclosed is notice to all Assigns and Successors of the addressed Office or the like. The term "or the like" means any office that is styled in an analogous or similar manner as the addressed. And to negate misnomers or other affiliations which would prevent any Party from being personally liable as a natural person or man or woman, any configuration of the name of any Party addressed herein means and includes the full legal or Christian name of any such Party addressed.

Greetings Clerk LaRowe,

I am submitting this Public Records Request for Documentation Supporting Noise Ordinance Justification (*"documents request", or "DR" herein*) pursuant to Florida Statute § 119 for access to public records related to the new noise ordinance passed by the City Commission of St. Pete Beach.

There were six factual allegations claimed by the council as the rationalization for passing the ordinance described in the city council agenda titled, *"CITY COMMISSION MEETING CITY OF ST. PETE BEACH, Agenda Report: Consider adoption of additional clearly audible, nuisance based standard in the noise ordinance"*, and dated January 28, 2025.

Therefore documents are hereby requested which consist of the six categories (DR1-6): **Health Impact Studies, Community Feedback Records, Economic Impact Assessments, Legal Memos or Opinions, Enforcement Records, and Business Impact Estimates**

Response Timeline and Implications:

Initial Response (IR): I request that you provide the documents listed below within 30 calendar days from the receipt date of this letter.

Notice of Fault (NOF): Should there be no response or if the response does not include the requested documents or provides irrelevant information within this period, I will consider this a fault in good faith response. I will issue a second notice, granting an additional 7 calendar days for the city to correct this oversight.

Notice of Administrative Default (NOAD): After this additional 7-day period, should there continue to be no relevant response or if the documents remain undisclosed, I will issue a Notice of Administrative Default. This would indicate that all administrative remedies have been exhausted, demonstrating the city's unwillingness or inability to provide the requested documentation.

Mediation (MED): The issuance of the NOAD would serve as a basis for seeking mediation through the Florida Attorney General's Public Records Mediation Program, as the next step to resolve this dispute and ensure compliance with public records law.

I. REQUESTED FORMAT FOR DOCUMENTS REQUEST

Understanding that the volume of records over the past three years could be significant, I propose the following strategy to manage this request:

Initial Tally Request: For your first response, please provide only a tally each of the following document requests 1-6 below by number and category, and then followed by the cost. If cost estimates will delay the tally, please provide tally only ASAP as priority. For each of the following document categories 1-6, I request a tally of the number of records available from the past three years: For each of the six categories of records, please format as follows

- Document Request (*DR*) Number [*DR1, DR2, DR3a, 3b, etc...*]
Total Number of Records: [Specify Quantity]
Yearly Breakdown:
2021: [Quantity]
2022: [Quantity]
2023: [Quantity]
2024: [Quantity]
2025: [Quantity] (up to the current date)

A SAMPLE DOCUMENT REQUEST TALLY TABLE IS PROVIDED ON PAGE 8 OF THIS COMMUNICATION.

If No, such record(s) exist, please quantify in the format described above with a zero, "0" in the Document Request Tally Table, or classified by document request number and category.

If such records exist and are exempt from disclosure:

Redaction: Pursuant to Florida Statute § 119.07(1)(d), please redact those portions exempt from disclosure and provide the non-exempt remainder.

Complete Exemption: If the record is completely exempt, pursuant to Florida Statute § 119.07(1)(e), state which record and the basis of the exemption, including the statutory citation.

Written Explanation: Also, pursuant to Florida Statute § 119.07(1)(f), provide in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

Reminder: Under Florida Statute § 119.07(1)(c), you are required to acknowledge this request promptly and respond in good faith. This includes making reasonable efforts to determine from other officers or employees within the agency whether the requested records exist. Failure to respond promptly or to clarify whether records do or do not exist will be interpreted by the undersigned as not acting in good faith.

Understanding Volume and Cost:

I acknowledge that the complete retrieval of these records might be voluminous, potentially requiring significant effort and cost. Therefore, I am willing to pay for the retrieval, copying, or any other associated costs for these documents. Please provide an estimate of these costs based on the tally table provided on page 8.

Pending Full Retrieval:

Upon receiving the tally with cost estimate, I will confirm my commitment to proceed with the full retrieval of the records. If cost estimates delay tally, please send tally only as a priority.

II. DOCUMENT REQUEST CATEGORIES 1-6 (DR 1-6, HEREIN)

Pursuant to the city council agenda titled "*CITY COMMISSION MEETING CITY OF ST. PETE BEACH, Agenda Report: Consider adoption of additional clearly audible, nuisance based standard in the noise ordinance*" dated January 28, 2025, I am submitting this request under Florida Statute § 119 for access to public records related to the new noise ordinance in St. Pete Beach. Digital Copies: **If possible, digital copies are preferred** in order to facilitate analysis, especially for large datasets or reports.

1. **DR1: Health Impact Studies (HIS):** Documentation or research cited by the City Commission to support claims about the health impacts of excessive noise.

- a. Local or regional studies on health impacts of noise pollution.
- b. Data from health departments or universities on noise-related health issues

2. **DR2 Community Feedback Records (CFR) :** All records of community feedback, including but not limited to complaints, surveys, town hall meeting minutes, or public comments from the last three years, specifically addressing noise issues in St. Pete Beach. Any feedback that explicitly discusses the impact of noise on quality of life, health, or property values. any digital records like emails or social media posts where community members have voiced their opinions on noise, especially if these platforms were used for official feedback collection.

3. **DR3 Economic Impact Assessments (EIA):** Studies or reports linking noise levels to property value depreciation within St. Pete Beach or comparable areas. (note: please index each as "DR3a, 3b, etc...")

- a. Historical Property Value Data:
 - Assessments and Tax Records: property assessment data for areas near known noise sources compared to quieter areas over a significant period which demonstrate trends in property value changes.
- b. Appraisal Reports:
 - Specific Appraisals: Appraisals of properties close to venues or areas where noise complaints are common, which could reflect comments or adjustments made due to noise.
- c. Comparative Sales Data:
 - Sales Records: Documentation showing sales prices of properties in noisy areas vs. quieter areas to establish if there's a noticeable difference or decline over time due to noise.
- d. Real Estate Market Analyses:
 - Market Reports: Any market analyses, especially those done by real estate firms or city departments, that discuss factors affecting property values, including noise.
- e. Noise Level Measurements:
 - Noise Studies: Any studies or measurements conducted by the city or third parties that correlate specific noise levels with property values in St. Pete Beach.

- f. Expert Testimonies or Opinions:
 - Expert Reports: If the city has engaged experts to discuss the impact of noise on property values, ask for these reports or any presentations made to the city commission.
- g. Public Feedback and Complaints:
 - Surveys or Public Comments: Records of public feedback where noise affecting property value or livability was explicitly mentioned by residents.
- h. Economic Impact Assessments:
 - Business Impact Studies: If there's a broader economic study, it might include data on how noise affects property values indirectly through business health or tourism.
- i. Zoning and Development Impact:
 - Zoning Changes: Documentation on zoning decisions or changes made in response to or in anticipation of noise issues, which might reflect an acknowledgment of noise impact on property values.
- j. Academic or Industry Research:
 - Citations or Studies: Any academic research or industry white papers cited by city officials in support of the noise-property value correlation.
- k. Mitigation Efforts:
 - Details on any noise mitigation projects undertaken by the city in the last decade, including before-and-after studies or predictions on how these projects would or did affect property values."

4. **DR4: Legal Memos or Opinions (LMO):** Any legal analysis or correspondence justifying the alignment of the new noise ordinance with existing state laws or local ordinances.

5. **DR5: Enforcement Records (ER):** Enforcement records related to noise violations over the last three years in St. Pete Beach. Include:

- a. Number of citations issued per year for noise violations,
- b. Locations where these violations were most frequent.
- c. Outcomes of these enforcement actions (e.g., fines paid, cases dismissed, court rulings).
- d. Any internal or external reviews assessing the effectiveness of noise enforcement in reducing noise levels or complaints.
- e. Any GIS mapping or data visualizations if available, showing where and how often noise enforcement actions have occurred in relation to residential and commercial zones


6. **DR6: Business Impact Estimates (BIE):** The complete business impact estimate prepared under Florida Statute 166.041(4) for the new noise ordinance, including:

- a. Detailed analyses or projections on how the ordinance might affect local businesses, particularly those in the hospitality and entertainment sectors.
- b. Any data or models used to estimate changes in business revenue, customer traffic, or operational costs due to the new noise regulations.
- c. Correspondence or minutes from meetings where this estimate was discussed or presented to the City Commission.
- d. Records of consultations with local business organizations or chambers of commerce,, including any feedback or concerns raised by businesses.

Contact for Costs: Along with the Document Tally Table and associated costs, if digital copies are not available via email, and if there are any additional costs associated with copying or providing these documents, please contact me at

Geoffrey Caputo
4604 49TH ST. N #140
KENNETH CITY, FL. 33709
FLORIDAREPUBLIC@GMAIL.COM

Thank you for your prompt attention to this matter.

Sincerely, 

Geoffrey Caputo

III. AFFIDAVIT IN SUPPORT OF DOCUMENTS REQUESTS 1-6 (DR1-6)

STATE OF FLORIDA
COUNTY OF PINELLAS

I certify that this is a true and exact copy of the original document presented to me by Geoffrey Caputo.

D. Holloway



Deshaun Holloway
Comm.: HH 614469
Expires: Nov. 20, 2028
Notary Public - State of Florida

I, Geoffrey Caputo, being duly sworn, depose and state as follows:

Pursuant to the factual allegations forming the basis for the proposed noise ordinance, **COMMISSION MEETING CITY OF ST. PETE BEACH, Agenda Report: Consider adoption of additional clearly audible, nuisance based standard in the noise ordinance** dated January 28, 2025,

1. **DR1:** Affiant has not seen nor been presented with any material facts or evidence demonstrating the existence of any Health Impact Studies, and I deny that such records exist.
2. **DR2:** Affiant has not seen nor been presented with any material facts or evidence demonstrating the existence of any Community Feedback Records, and I deny that such records exist.
3. **DR3:** Affiant has not seen nor been presented with any material facts or evidence demonstrating the existence of any Economic Impact Assessments related to property values, and I deny that such records exist.
4. **DR4:** Affiant has not seen nor been presented with any material facts or evidence demonstrating the existence of any legal analysis or correspondence justifying the alignment of the new noise ordinance with existing state laws or local ordinances, and I deny that such records exist.
5. **DR5:** Affiant has not seen nor been presented with any material facts or evidence demonstrating the existence of any Enforcement Records data on noise violations, citations, and enforcement actions under the current or previous noise ordinances to demonstrate the effectiveness or lack thereof.
6. **DR6:** Affiant has not seen nor been presented with any material facts or evidence demonstrating the existence of Business Impact Estimate prepared under Florida Statute 166.041(4) regarding the business impact of the proposed noise ordinance, and I deny that such records exist.

Conclusion: This affidavit is submitted in good faith to support my public records request to the City of St. Pete Beach, should I not have received any tally of, or any documentation or evidence that would substantiate the claims made by the city in relation to the noise ordinance discussed in the city council meeting on January 28, 2025. My aim is to ensure transparency and compliance with Florida Statute § 119 by documenting my experience and the absence of evidence provided by the city regarding the aforementioned document requests.

FURTHER AFFIANT SAYETH NOT.

Geoffrey Caputo

February 2, 2025

Sworn to and subscribed before me this 2nd day of February 2025 by Geoffrey Caputo has produced identification via Florida Drivers License C-130-290-70-305-0.

Notary Public

D. Holloway



Deshaun Holloway
Comm.: HH 614469
Expires: Nov. 20, 2028
Notary Public - State of Florida

My Commission Expires: *Nov 20, 2028*

IV. MEMORANDA OF LAW FOR AFFIDAVIT IN SUPPORT OF DR1-6

Preliminary Statement:

While this matter does not yet constitute a docketed court case, the undersigned, as the Affiant, asserts that the absence of documentation in response to the public records request can be construed as a "default admission" *on the administrative level* by the City of St. Pete Beach that no such records exist, pending their production.

1. Must The Common Law of England be recognized by all Florida Courts?
 - Florida Statutes 2.01 and 775.01: These statutes confirm that the common law of England, not inconsistent with modern law, is enforceable in Florida. Thus, applicable common law principles must be recognized.
2. Are there Common Law Maxims which express that silence constitutes consent or admission?
Relevant Maxims:
 - Qui tacet consentire videtur - "He who is silent appears to consent."
 - Tacita quaedam habentur pro expressis - "Things silent are sometimes considered as expressed."
 - Ejus est non nolle, qui potest velle - "He who may consent tacitly, may consent expressly."

These maxims support the notion that silence or lack of response can be interpreted as an admission or consent in legal contexts.

3. Do Courts recognize Sir William Blackstone as authoritative in interpreting the Common Law of England?

Decisions like *Wilson v. Arkansas*, *Adickes v. S.H. Kress and Company*, and *Coventry First v. State* affirm Blackstone's authority in interpreting common law.

4. Must Florida Courts recognize the Common Law Maxims above?
 - Blackstone's Commentary: Volume 1 § 82 acknowledges maxims as rules of common law based on custom and usage.
 - Therefore, if Florida courts observe these maxims, they must recognize them as part of the common law applicable in Florida.
5. Do Florida courts observe, as a matter of custom and usage, the principles of the maxims above?

Florida Case Law: Cases such as *Elliott v. Aurora Loan Serv.*, *Vacation Ventures v. Holiday Promo.*, *Rafal v. Mesick*, *Weiss v. Leatherberry*, and *Horowitz v. Laske* demonstrate that silence or failure to counter with evidence shifts judicial favor towards the party making uncontradicted assertions.

Conclusion:

Based on the common law principles and Florida case law cited, the Affiant asserts that the City's failure to respond or produce the requested documents should be interpreted administratively as a "default admission" that no such records exist, unless and until such records are produced. This interpretation is grounded in the legal tradition where silence can be deemed an admission, especially in the context of sworn statements (affidavits) and the absence of counter-affidavits or evidence. The city's non-response thus serves as an implicit acknowledgment under common law maxims, justifying the Affiant's claim of an administrative "default admission" pending production of the documents.

Submitted this 2nd day of February, 2025 _____, Geoffrey Caputo

	DOCUMENT REQUEST TALLY						
	EXEMPT (Y or N)	2021	2022	2023	2024	2025	2021-2025 SUB TOTALS
DR1 a-b							
a							
b							
DR2							
DR3 a-k							
a							
b							
c							
d							
e							
f							
g							
h							
i							
j							
k							
DR4							
DR5 a-e							
a							
b							
c							
d							
e							
DR4 a-d							
a							
b							
c							
d							
YEARLY SUB TOTALS							
						2021-2025 GRAND TOTAL DR1-6	
						COST	\$_____

EXHIBIT D: NOTICE OF FAULT

To: Amber LaRowe, City Clerk
City Hall, City Clerk's Office
155 Corey Avenue
St. Pete Beach, FL 33706
Date: March 8, 2025
Cert # 7020 2450 0001 0277 5118

NOTICE OF FAULT / FOLLOW-UP - PUBLIC RECORDS REQUEST

Dear City Clerk LaRowe,

A public records request reached your office on the 5th of February 2025 via USPS Certified Mail (Tracking Number: 7020 2450 0001 0300 9908), tied to Ordinance 2025-02's first reading—the noise ordinance. It covered Health Impact Studies, Community Feedback Records, Economic Impact Assessments, Legal Memos, Enforcement Records, and Business Impact Estimates. A tally sheet was included for a simple start, if the rest took a bit longer. It's obvious the city's got a full plate with Hurricanes Helene and Milton—a lot to handle, naturally.

Florida Statute § 119.07(1)(c) points to a response within 10 business days as a general practice. From the 5th of February to the 17th, that time passed quietly. Now, on the 8th of March—30 days on—the tally sheet/cost estimate is still pending. Although there's a workshop planned for the 22nd of April, there are resulting gaps where the documentation could help ascertain the ordinance's need or purpose.

§ 166.041(4)(a), Business Impact Estimate— should include risk analyses, contingencies, with some evidence of commercial venue outreach. To no avail, on the city's website's the the terms —'impact estimate,' 'noise' were queried—though other BIEs are about. A fault is therefore worthy to note, and provided to the clerk was another copy of said tally sheet to complete within 7 business days from receipt of this notice —with perhaps a projected timeline referencing / indexing each Document Request (DR1-6) with cost estimate.

Otherwise it will be construed that the City of St. Pete Beach is in an *administrative default at common law (ADACL- please see Memoranda In Support of Affidavit sent previously)*, and without documentation to fulfill this §119 request which could demonstrate a compelling government interest and rational basis for said ordinance. Further administrative remedies could include mediation at the state level.

Constitutionally Yours,

Geoffrey Caputo,



CORRESPONDENCE:

Geoffrey Caputo

4604 49th St. N #140

St. Petersburg, FL 33709

floridarepublic@gmail.com

Attached: Tally Sheet for DR1-6

Notice to Principal is Notice to Agents and Notice to Agents is Notice to Principal

EXHIBIT E:

1st

REACTIVE/PARTIAL
COMPLIANCE

3/11/2025

*All Documents

Remitted in separate
collection (not attached)

City of St. Pete Beach, FL -
Records Request **PRR2025-22**
Completed Notification ➡ Inbox



JustFOIA Notificat... Mar 11
to me ▾



Hello,

The request [Request Number: PRR2025-22](#)
has been completed.

If you have any questions, please contact the
St. Pete Beach City Clerks office at
cityclerk@stpetebeach.org or call 727-363-
9201.

Thank you,

Amber LaRowe
City Clerk
City of St. Pete Beach
[155 Corey Avenue](#)
[St. Pete Beach, FL. 33706](#)
Phone: 727.363.9220
Fax: 727.541.8040

EXHIBIT F:
THANK YOU LETTER
FOR FIRST REACTIVE
PARTIAL COMPLIANCE
ONE DAY AFTER NOTICE
OF FAULT & AFTER 32
DAYS OF NO CONTACT

To: Amber LaRowe, City Clerk
City Hall, City Clerk's Office
155 Corey Avenue
St. Pete Beach, FL 33706
Date: March 13, 2025
USPS Cert. 9589 0710 5270 0028 5340 5340 41

THANK YOU LETTER FOR PARTIAL RESPONSE PER PRR2025-22

Dear City Clerk LaRowe, *(Notice to Principal is Notice to Agents / Notice to Agents is Notice to Principal)*

Thank you for your response to my public records request sent via email this past Tuesday (3/11/25), received by the city on February 5, 2025, via USPS Certified Mail (Tracking Number: 7020 2450 0001 0300 9908) and recorded as PRR2025-22. I appreciate the documents provided, including DR1, DR2, and DR5, and your note indicating that the request is "completed."

However, I must note that critical documents—specifically DR3 (Economic Impact Assessments), DR4 (Business Impact Estimates), and DR6 (Attorney Review Records)—were not included in PRR2025-22. Under Florida Statute § 119.07(1)(c), the city is required to provide a complete response to public records requests, and to expedite a 10-day response under Florida Law, I provided a template for a tally sheet of responsive documents, with a request to fill in with zeroes (0) - the documents which do not exist, even prior to a cost estimate. The absence of these documents raises concerns about the city's compliance with statutory obligations and the transparency of Ordinance 2025-02's development.

If this response is indeed deemed complete, I will construe that no additional documents exist to substantiate the ordinance's claims regarding health impacts, economic effects, or enforcement needs. This assumption is significant, as it suggests the city may lack evidence to support the ordinance's foundational assertions.

Accordingly, I remain on pace for the Administrative Default At Common Law (ADACL) deadline of March 18, 2025. Should the city want an extension till one week prior to the workshop date of April 22, please correspond and let me know. Should any new or additional documents become available before then, I have provided the tally table, in which I've included the documents that were produced. I would welcome any new document, should it come out of the pile per chance, to be included to ensure a full understanding of the ordinance's basis. Please return the completed table, even putting zeroes (0) in the blank spaces even if no documents turn up by the 18th of March, or if an extension is requested - by April 15, 2025.

Constitutionally Yours,


Geoffrey Jacob Caputo

CORRESPONDENCE:

Geoffrey Caputo
4604 49th St. N #140
St. Petersburg, FL 33709
floridarepublic@gmail.com

Attached:

Partially Submitted Document Request Tally Table

DOCUMENT REQUEST TALLY						
	2021	2022	2023	2024	2025	CHECK-OFF
DR1: Health Impact Studies (HIS)						
a: Documentation or research cited by the City Commission to support health impact claims			Staff Report, Dec 2023) - Page 6 mentions noise mitigation but no studies.			Partial (2023) - No actual studies, just mitigation mention
b; Health Impact Data (local, regional)						
DR2: Community Feedback Records (CFR)						
Complaints, surveys, town hall minutes, public comments (last 3 years)			DR2.1 (Micklitsch, Sep 2023) - Slide 3: 11 complaints; Slide 5: resident quotes			Received (2023) - Complaints and comments from 2023 only
			DR2.2 (Hysell, Sep 2023) - Slide 3: complaints; Slide 6: quotes			
			DR2.3 (Letters, Dec 2023) - Pages 11-25: opposition letters			
			DR2.4 (Correspondence, Nov-Dec 2023) - Pages 2, 3, 5: opposition emails			
Feedback on quality of life, health, or property values			DR2.1 - Slide 5: sleep disruption DR2.2 - Slide 6: sleep, Slide 9: property values DR2.3 - Pages 12, 15, 19: peace/sleep DR2.4 - Pages 2, 5: peace/sleep			Received (2023) - Specific impacts noted
Digital records (emails, social media)			DR2.4 - Emails from Nov-Dec 2023			Received (2023) - Emails only

	2021	2022	2023	2024	2025	CHECK-OFF
DR3: Economic Impact Assessments (EIA)						
Studies linking noise to property value depreciation						
Historical Property Value Data (assessments, tax records)						
Appraisal Reports						
Comparative Sales Data						
Real Estate Market Analyses						
Noise Level Measurements (correlated with property values)						
Expert Testimonies or Opinions						
Public Feedback on Property Values			DR2.2 - Slide 9: property values mentioned (2023)			PARTIAL (2023) - ANECDOTAL MENTION, NO STUDY
Business Impact Studies (economic/ property value link)						
Zoning and Development Impact			DR1 - Zoning discussion (Dec 2023)			PARTIAL (2023) - ZONING CONTEXT, NO VALUE IMPACT
Academic/ Industry Research						
Mitigation Efforts (before/ after studies)			DR1 - Page 6: mitigation wall (Dec 2023)			PARTIAL (2023) - MITIGATION NOTED, NO VALUE STUDY
DR4: Legal Memos or Opinions (LMO)						
Legal analysis or correspondence						

	2021	2022	2023	2024	2025	CHECK-OFF
DR5: Enforcement Records (ER)						
Citations issued per year		DR5 - Noise surveys (2022-2023), no citation counts				PARTIAL (2022-2023) - NO SPECIFIC CITATION DATA
Locations of frequent violations		DR5 - 2007 Pag Way (2022-2023)				RECEIVED (2022-2023) - SPECIFIC LOCATION DATA
Outcomes of enforcement actions			DR5 - "Potential violation" (page 16, 2023), no outcomes			ARTIAL (2023) - NO RESOLUTION DETAILS
Reviews of enforcement effectiveness						
GIS mapping or visualizations						
DR6: Business Impact Estimates (BIE)						
Complete BIE under Florida Statute 166.041(4)						
Analyses/projections on business effects						
Business Impact Studies (economic/property value link)						
Data/models on revenue, traffic, costs						
Correspondence/meeting minutes						
Consultations with business organizations						

**EXHIBIT G:
NOTICE OF
ADMINISTRATIVE
DEFAULT AT
COMMON LAW
SENT TO CITY OF
ST PETE BEACH**

Notice of Administrative Default at Common Law - PRR2025-22

Amber LaRowe
City Clerk
155 Corey Avenue
St. Pete Beach, FL 33706
March 28, 2025

USPS Cert: 7020 2450 0001 0277 5804

CORRESPONDENCE:

Geoffrey Caputo
4604 49TH ST. N #140
Kenneth City, FL 33709
floridarepublic@gmail.com

Dear City Clerk LaRowe, (*Notice To Principle Is Notice To Agent/Notice To Agent Is Notice To Principle*):

This letter accompanies the enclosed *Notice of Administrative Default at Common Law (ADACL)* regarding the City of St. Pete Beach's response to *Public Records Request PRR2025-22*.

The purpose of this communication is to formally document the City's default in fully responding to the aforementioned request. Despite the initial *Notice of Fault* and subsequent communications, the City's partial response and failure to address noted deficiencies, including the **refusal to complete the tally sheet with zeros or exemptions**, constitute *tacit acquiescence to the non-existence* or inadequacy of critical documents supporting *Ordinance 2025-05*. This is grounded in the legal principle of *qui tacet consentire videtur*.

It is hereby requested that the City of St. Pete Beach address the deficiencies outlined in the attached documents promptly before the April 22 workshop or suspend any activity on *Ordinance 2025-05* pending documentation supporting the reasons given on page 220 in the *01282025 CC Agenda Packet* which could rationalize its enactment.

Attached is the tally sheet with the documents from *PRR2025-22*, as they stand. If the tradition of transparency St. Pete Beach is known for holds, filling in exemptions (*Fl. Stat. Ch. 119.07(1)(c,d,f)*) or zeroes for records not in custody or control could be a great step forward. Sending it via email or USPS would keep the spirit of openness.

Constitutionally Yours,



Geoffrey Jacob Caputo, 03/28/2025
{*Administrative Processor At Common Law*} -
- *Florida*

Attachments:

1. Findings of Fact in Administrative Record (FFAR)
2. Conclusions At Law Of Administrative Record (CLAR)
3. Memoranda of Law In Support of ADACL
4. Tally Table of *Partially Fulfilled DR1-6*

cc: Mayor Petrilla, Karen Marriott, District 1 / Lisa Robinson, District 2 / Betty Rzewnicki, District 3 / Joe Moholland District 4 / Ralf Brooks, Interim City Attorney

I. FINDINGS OF FACT IN ADMINISTRATIVE RECORD

State of Florida)
County of Pinellas)

(1) Introduction

This document outlines the findings of fact related to *Public Records Request PRR2025-22*, submitted to the City of St. Pete Beach.

(a) Factual Background

- (i) Request Submission:** On February 2, 2025, I submitted *PRR2025-22* via USPS Certified Mail (Tracking #70202450000103009908), “*USPS#___*”, herein), received February 5, requesting six document categories (*DR1-DR6*) related to *Ordinance 2025-02* and a tally sheet to indicate document existence **or non-existence** by category and year (2021-2025).
- (ii) Notice of Fault:** On March 8, 2025, I issued a *Notice of Fault* via *USPS #7020 2450 0001 0277 5118*, alleging non-compliance after a 30-day lapse (February 5 to March 7), demanding tally sheet by March 15. This preceded any city response.
- (iii) Partial Response:** On *March 15, 2025*, the city provided a partial response via JustFOIA, emailed by Amber LaRowe, addressing *DR1, DR2, DR5 (all partially)*, *omitting DR3, DR4, DR6*, and tally sheet—*post-Fault*, showing delay.
- (iv) Thank You Letter (Quasi-Second Notice):** On *March 13, 2025*, I sent a *Thank You Letter* via *USPS #95890710527000285340534041*, acknowledging the forthcoming partial response (received March 15), noting *deficiencies in DR1, DR2, DR5's scope*, and the *absence of DR3, DR4, DR6*, setting *March 18 or April 15 deadlines*.
- (v) Non-Compliance and Document-Specific Issues:** As of March 25, 2025, the city has not fully responded, omitting *DR3, DR4, DR6* entirely, partially fulfilling *DR1, DR2, DR5* with inadequate scope, and failing to mark non-existent documents with zeros, despite the city-wide claims made in the 01282025CC Agenda Packet.

The Mayor and Commissioners have been copied throughout the entire process detailed above, and the USPS Cert. # are available on request.

Details And Implications As Follows:

VERIFIED Notice of Administrative Default at Common Law - PRR2025-22

(2) Document-Specific Findings

(a) DR1: Health Impact Studies (HIS)

- (i) **Requested:** Documentation or research supporting noise-related health claims, including local epidemiological data (e.g., from FDOH).
- (ii) **Partially Fulfilled:** December 2023 Staff Presentation mentions noise mitigation, focused solely on Red, White & Booze (RWB) and another case (per clerk's March 15 response).
- (iii) **Unfulfilled:** No Florida CHARTS data (<https://www.flhealthcharts.gov/>) or FDOH epidemiological investigation for city-wide trends in noise-induced conditions (e.g., hearing impairment, hypertension), as noted in my *Thank You Letter*.
- (iv) **Implication:** RWB-centric 2023 data doesn't reflect a city-wide health crisis, undermining the agenda's broad health claims under Fla. Stat. § 381.0031.
- (v) **Adverse Inference for Lack of Documentation:** The city's failure to provide city-wide health data suggests no such trend exists or would contradict their claims (*Public Health Trust of Dade County V. Valcin*, 507 So. 2d 596, Fla. 1987).

(b) DR2: Community Feedback Records (CFR)

- (i) **Requested:** Complaints, surveys, town hall minutes, public comments (2021-2025), feedback on quality of life, health, or property values, including digital records.
- (ii) **Partially Fulfilled:** Correspondence and letters from 2023, primarily RWB complaints (per clerk's March 15 PDF upload).
- (iii) **Unfulfilled:** No feedback from 2021, 2022, 2024, or 2025; no surveys, town hall minutes, or city-wide comments beyond RWB; no digital records outside 2023, as flagged in my *Thank You Letter*.
- (iv) **Implication:** 2023 RWB-focused letters can't demonstrate a city-wide consensus or trend justifying Ordinance 2025-05's scope.
- (v) **Adverse Inference:** The absence of multi-year, city-wide feedback infers no broad community support or need exists (*Public Health Trust V. Valcin*, 507 So. 2d 596, Fla. 1987).

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(c) DR3: Economic Impact Assessments (EIA)

(i) **Requested:** Studies linking noise to property value depreciation, including historical sales data and noise measurements.¹

(ii) **Unfulfilled:** No studies provided (per March 15 response and Thank You Letter).

(iii) **Implication:** Without hedonic models, the agenda's "declining property values" claim lacks factual basis.

CONDITION	ICD-10-CM CODES	TRACKED IN CHARTS?
<i>Hearing Impairment</i>	H90.3, H91.90, H83.3	Yes (disability/hospital data)
<i>Hypertension</i>	I10, I11.9, I11.0	Yes (chronic disease stats)
<i>Ischemic Heart Disease</i>	I25.10, I25.110	Yes (mortality/morbidity)
<i>Sleep Disturbance</i>	G47.9, G47.00, F51.9	Yes (indirect via mental health)
<i>Annoyance</i>	None (R45.1 proxy)	No
<i>Decreased School Performance</i>	None (F81.9 proxy)	No (education data instead)

¹ **Investopedia** – "Hedonic Pricing" (<https://www.investopedia.com/terms/h/hedonicpricing.asp>): Property prices bundle internal (e.g., size) and external factors (e.g., noise). Hedonic regression quantifies noise's specific value decrease (e.g., % per decibel), unlike raw averages that mask causality.

Corporate Finance Institute – "Hedonic Regression Method" (<https://corporatefinanceinstitute.com/resources/economics/hedonic-regression-method/>): Real estate's complex attributes demand regression to estimate noise's "hedonic price," offering precision basic metrics can't.

Review of Environmental Economics and Policy – Bishop et al. (2020) (<https://www.journals.uchicago.edu/doi/10.1093/reep/reaa001>): Hedonic models are the "premier approach" for valuing noise's impact, controlling spatial and housing variables to isolate marginal losses—simple methods fail this test.

UK Office for National Statistics – "Hedonic Pricing Method Note" (<https://www.ons.gov.uk/economy/environmentalaccounts/methodologies/valueofnatureimplicitinpropertypriceshedonicpricingmethodhp>): Raw data can't unbundle noise effects; hedonic regression's 80%+ R-squared proves its necessity for credible disamenity analysis.

ScienceDirect – Taylor, L.O. (2018) (<https://www.sciencedirect.com/science/article/abs/pii/S157400991830018X>): Hedonic models dominate environmental valuation, using sales data to pinpoint noise-driven declines—census aggregates lack this rigor.

CoreLogic Australia – "Home Value Index" (<https://www.corelogic.com.au/our-data/corelogic-indices>): Hedonic indices avoid compositional bias of repeat sales, modeling all properties to track noise-related value drops accurately.

Complexity: Noise's impact on property values is tangled with location, size, and amenities—hedonic models untangle it via regression, per Investopedia and Taylor.

Isolation: Simple averages or median sales (e.g., Pinellas County data) can't isolate noise's effect; hedonic regression pinpoints its marginal cost, per CFI and Bishop et al.

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(iv) Adverse Inference: The city's failure to produce hedonic model analyses in DR3 means the purported "declining property values" claim is unsubstantiated conjecture, not fact.

(d) DR4: Legal Memos or Opinions (LMO)

- (i) Requested:** Legal analysis or correspondence supporting the ordinance.
- (ii) Partially Fulfilled:** A memorandum of law from the *January 28, 2025*, agenda packet regarding the *Catalano* case (per prior input, assumed in clerk's response).
- (iii) Unfulfilled:** No additional legal memos or analyses beyond the Catalano-specific document addressing Ordinance 2025-02's city-wide scope, First Amendment, or compliance with state law, as noted in my Thank You Letter.
- (iv) Implication:** A single case memo doesn't substantiate the ordinance's broader legal foundation, leaving its city-wide application and constitutional risks unaddressed.
- (v) Adverse Inference:** The lack of comprehensive legal analysis beyond Catalano infers no robust defense exists for Ordinance 2025-02's scope or would expose vulnerabilities (Valcin, Id.).

(e) DR5: Enforcement Records (ER)

- (i) Requested:** Citations issued per year (2021-2025), locations of frequent violations, outcomes, effectiveness reviews.
- (ii) Partially Fulfilled:** May-July 2023 noise surveys (decibel readings) tied to RWB, and 2007 measurements (per clerk's March 15 response).
- (iii) Unfulfilled:** No citation counts, city-wide violation locations, outcomes, or effectiveness reviews (2021-2025), as noted in my Thank You Letter.
- (iv) Implication:** RWB-focused 2023 and 2007 data—18 years stale—don't reflect a current, city-wide enforcement need.
- (v) Adverse Inference:** Failure to show city-wide enforcement data suggests no pervasive issue exists (Valcin, Id.).

(f) DR6: Business Impact Estimates (BIE)

(i) Requested: Compliance with Fla. Stat. § 166.041(4)(a) Business Impact Estimate ² for Ordinance 2025-05.

(ii) Unfulfilled: The city disregarded § 166.041(4)(a)'s mandates and global norms ³, leaving venue impacts and enforcement costs unquantified, untested, and opaque.

(A) Evidence: Even if there was a BIE, there must be a Public Purpose (§ 166.041(4)(a)): GAO (Ch. 4, p. 38) There is no economic impact statement tying Ordinance 2025-05 to noise control goals.

(B) No Business Count (§ 166.041(4)(a)1): GAO (Ch. 9, p. 90), Circular A-4 (Ch. 7, p. 27), and RFA Guide (Ch. 1, p. 15) demand data-driven counts, segmented by entity type (e.g., bars vs. music venues). The city didn't estimate or categorize affected venues.

(C) No Economic Impact (§ 166.041(4)(a)2): GAO (Ch. 3, p. 31), Circular A-4 (Ch. 2, p. 5), and RFA Guide (Appendix M, p. 201) require quantified revenue losses (e.g., gigs canceled) and achievability tests (e.g., costs >10% sales = "Stress"). There must be a BIE reflecting this.

(D) No Compliance Costs (§ 166.041(4)(a)3): GAO (Ch. 10, p. 100), Circular A-4 (Ch. 7, p. 27), and RFA Guide (Ch. 2, p. 37) mandate cost estimates (e.g., \$10k–\$50k soundproofing) and alternatives to minimize burden (e.g., waivers).

² Fla. Stat. § 166.041(4)(a) mandates a BIE with six elements: public purpose (§ 166.041(4)(a)), number of businesses impacted (§ 166.041(4)(a)1), direct economic impact (§ 166.041(4)(a)2), compliance costs (§ 166.041(4)(a)3), new fees (§ 166.041(4)(a)4), and municipal costs (§ 166.041(4)(a)5).

• GAO-20-195G, Circular A-4, OECD, and the RFA Guide set global standards—structured estimates, stakeholder input, risk analysis, entity segmentation, and alternatives—which the city must meet for a "good faith" BIE. It didn't.

³ OMB circular A-4 : <https://whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>

• GAO-20-195G Cost Estimating and Assessment Guide <https://www.gao.gov/assets/gao-20-195g.pdf>

• Regulatory Impact Analysis - OECD https://www.oecd.org/en/publications/regulatory-impact-analysis_9789264162150-en.html

• U.S. Small Business Administration, A GUIDE FOR GOVERNMENT AGENCIES How to Comply with the Regulatory Flexibility Act , August 2017 : <https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf>

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(E) No Fee Details (§ 166.041(4)(a)4): GAO (Ch. 7, p. 60) and Circular A-4 (Ch. 7, p. 27) require fee breakdowns (e.g., fines). There must be a BIE reflecting this.

(F) No Municipal Costs (§ 166.041(4)(a)5): GAO (Ch. 10, p. 100) and Circular A-4 (Ch. 7, p. 27) demand enforcement cost estimates. Nothing from the city.

(G) No Stakeholder Input: OECD (Ch. 9, p. 9), Circular A-4 (Ch. 1, p. 4), and RFA Guide (Ch. 1, p. 19; Ch. 4, p. 51) require venue feedback via outreach as a matter of both globally and generally accepted principle (e.g., SBREFA panels). The city ignored them.

(H) No Risk Analysis: As a matter of both globally and generally accepted principle, GAO (Ch. 12, p. 139), Circular A-4 (Ch. 11, p. 74), and RFA Guide (Ch. 1, p. 11) mandate uncertainty modeling (e.g., fine frequency) and threshold analysis for impact significance. There must be a BIE reflecting this.

(I) No Documentation: GAO (Ch. 13, p. 167), Circular A-4 (Ch. 13, p. 82), and RFA Guide (Ch. 1, p. 13) insist on transparency with a “factual basis.” The city’s non-existent data to support a responsibly calculated BIE so as to avoid incurring economic harms is concerning.

(J) Implication: The city disregarded § 166.041(4)(a)’s mandates and global norms —GAO’s structure (Ch. 3, p. 31), Circular A-4’s rigor (Ch. 2, p. 5), OECD’s consultation (Ch. 9, p. 9), and RFA Guide’s entity focus (Ch. 1, p. 15) and alternatives (Ch. 2, p. 37)—leaving venue impacts (revenue, retrofits, culture) and enforcement costs unquantified, untested, and opaque.

(iii) Adverse Inference: By dodging these standards, the city infers it’s hiding Ordinance 2025-05’s crippling toll on venues—evidenced by no segmentation (RFA Ch. 1, p. 15), no achievability analysis (Appendix M, p. 201), and no alternatives (Ch. 2, p. 37)—gutting the BIE’s purpose with an unsubstantiated justification for this ordinance

2025-22

VERIFIED Notice of Administrative Default at Common Law - PRR2025-22

(3) DEFAULT CLAUSE:

All of the foregoing and ensuing premise of *qui tacet consentire videtur* and *The Administrative Default At Common Law* shall apply to this sworn *Finding of Fact In Administrative Record*.


(4) SEVERABILITY:

In the event any part of (1) or (2) is held to be invalid for any reason, or any interpretation or reference of any kind stated do not apply; or is misquoted, misinterpreted; then the application of only the part that is proven incorrect shall be invalidated and the remaining parts, the application of sources so stated, shall not be affected but shall remain in full force and shall be taken as factual including Exhibits, Memorandums whatever- from this and all previously submitted documents, etc., by the Undersigned.

Constitutionally yours, , Geoffrey Jacob Caputo

JURAT:

Sworn to (or affirmed) and subscribed before me by means of physical presence this 28th day of March, 2025 , by Geoffrey Jacob Caputo, identified by Florida Drivers License C-130-290-70-305-0 .

(Signature of Notary Public - State of Florida) 

(Print, Type, or Stamp Commissioned Name of Notary Public)



Deshaun Holloway
Comm.: HH 614469
Expires: Nov. 20, 2028
Notary Public - State of Florida

I attest that the preceding or attached document is a true and exact complete, and unaltered Photocopy made by me of Verified Notice of Administrative Default at common law presented to me by the document custodian Geoffrey Jacob Caputo and to the best of my knowledge that the photocopied document is neither a vital record nor a public record certified copies of which are available from an official source other than a notary public.





Deshaun Holloway
Comm.: HH 614469
Expires: Nov. 20, 2028
Notary Public - State of Florida

II. CONCLUSIONS AT LAW OF ADMINISTRATIVE RECORD

The City of St. Pete Beach's failure to fully respond to public records request PRR2025-22 establishes an administrative default under common law principles, demonstrating both statutory violations and substantive inadequacies that undermine Ordinance 2025-05's legitimacy.

A. Legal Framework

1. Statutory Obligations

Florida's Public Records Act imposes explicit obligations on government agencies:

a. Fla. Stat. § 119.07(1)(a) mandates that agencies permit inspection and copying of records "at any reasonable time, under reasonable conditions." While this provides flexibility, it does not authorize indefinite delay or selective response.

b. Fla. Stat. § 119.07(1)(d) requires custodians to redact exempt portions but provide the remainder, not withhold entire categories of documents.

c. Fla. Stat. § 119.07(1)(e) demands citation of statutory exemptions when withholding records, which the city did not provide for DR3, DR4, and DR6.

d. Fla. Stat. § 166.041(4)(a) requires municipalities to prepare Business Impact Estimates with specific elements before adopting certain ordinances, including public purpose statements and economic impact analysis—documentation the city failed to produce.

2. Common Law Principles

a. Fla. Stat. § 2.01 incorporates English common law of general nature, including maxims like *qui tacet consentire videtur* ("he who is silent appears to consent"), when not inconsistent with statutory law.

b. The Florida Supreme Court in *State v. Ashley* confirmed that common law principles persist unless expressly abrogated by statute—Chapter 119 creates no barrier to applying common law defaults for non-responsive agencies.

c. *Vacation Ventures v. Holiday Promotions* establishes that silence can shift the burden of proof, creating evidentiary consequences for non-responsive parties—a principle directly applicable to the city's selective silence.

B. Analysis of Non-Compliance

1. Procedural Violations

a. The city's failure to respond for over 30 days (February 5 to March 8) violates the "reasonable time" standard under *Fla. Stat. § 119.07(1)(a)* and *Tribune Co. v. Cannella*, which prohibits automatic delays interfering with prompt access.

b. Even after the *Notice of Fault*, the city's partial response provided on *March 15* failed to address three entire document categories (DR3, DR4, DR6), constituting ongoing non-compliance under *Consumer Rights, LLC v. Bradford County*, which demands good faith responses.

c. The city's failure to provide the requested tally sheet marking non-existent documents with zeros violates *Fla. Stat. § 119.07(1)(c)*'s *good faith* requirement by obscuring whether documents exist or are being improperly withheld.

2. Substantive Inadequacies

a. DR1 (Health Impact Studies): The city provided only RWB-focused 2023 data, not the city-wide health trends claimed in the agenda. Under *Public Health Trust v. Valcin*, this selective disclosure permits an adverse inference that no broader health crisis exists.

b. DR2 (Community Feedback): Only 2023 RWB complaints were provided, not multi-year or city-wide feedback, allowing an inference under *Valcin* that no broad community consensus exists.

c. DR3 (Economic Impact Assessments): Complete non-production of hedonic studies permits an inference that no data supports claimed property value decreases.

VERIFIED Notice of Administrative Default at Common Law - PRR2025-22

d. DR4 (Legal Memos): The singular Catalano memo fails to address city-wide application or constitutional concerns, suggesting no robust legal foundation exists.

e. DR5 (Enforcement Records): Limited RWB and outdated 2007 data cannot substantiate a current, city-wide enforcement need.

f. DR6 (Business Impact Estimates): The absence of any BIE documentation violates Fla. Stat. § 166.041(4)(a) and suggests the city is concealing the ordinance's potential for economic harm to venues.

C. Administrative Default Established

1. Default Mechanism

a. The Administrative Default at Common Law process is founded on parallel principles to other administrative defaults in Florida law, such as Fla. Admin. Code R. 28-106.111(4), which treats non-response as waiver, and tax assessment defaults under Fla. Admin. Code R. 12-6.003(3), which finalize matters when parties fail to respond.

b. Under *Elliott v. Aurora Loan Servs.*, un rebutted affidavits establish facts for the affiant—here, the verified notice details the city's non-compliance, creating a record the city has not contested.

c. The common law maxim *qui tacet consentire videtur*, applied in modern contexts through cases like *Vacation Ventures*, operates to treat the city's silence on key documents as *tacit acquiescence* that such documents either do not exist or would contradict their claims.

2. Consequences of Default

a. The city's non-response to DR3, DR4, and DR6, and inadequate response to DR1, DR2, and DR5, constitutes *tacit admission* under common law that:

i. No city-wide health crisis exists (DR1)

ii. No broad community consensus supports the ordinance (DR2)

iii. No economic data links noise to property values (DR3)

- iv.** No comprehensive legal foundation supports the ordinance's scope (DR4)
- v.** No pervasive enforcement need exists (DR5)
- vi.** The purported/potential BIE lacks factual basis as required by *Fla. Stat. § 166.041(4)(a)* (DR6)

b. These admissions undermine the factual and legal predicates claimed in the January 28, 2025, agenda packet, rendering Ordinance 2025-05 procedurally deficient and substantively unsupported.

D. Available Remedies

1. Administrative Remedies

a. Mediation: *Fla. Stat. § 16.60* establishes the Attorney General's mediation program specifically for public records disputes, providing an efficient resolution mechanism.

b. Government Conflict Resolution: *Fla. Stat. § 164.1051* requires mediation for governmental disputes, including those related to ordinances.

2. Judicial Remedies

a. Mandamus: To compel production of withheld records under *Fla. Stat. § 119.07*. The administrative default strengthens this claim by documenting the city's persistent non-compliance.

b. Declaratory Relief: To address the procedural deficiencies in the BIE process under *Fla. Stat. § 166.041(4)(a)*, leveraging the adverse inferences established through ADACL.

c. Injunctive Relief: To prevent enforcement of an ordinance lacking factual or legal foundation, as demonstrated by the city's silence on critical supporting documentation.

d. Attorney's Fees: *Fla. Stat. § 119.12* mandates fee awards when agencies unlawfully withhold records, a determination strengthened by the documented non-compliance through the ADACL process.

E. Conclusion

The Administrative Default at Common Law has effectively documented and formalized the City of St. Pete Beach's persistent failure to fully respond to public records request PRR2025-22. Under common law principles incorporated through *Fla. Stat. § 2.01* and reinforced by modern cases like *Vacation Ventures and Elliott*, this silence constitutes tacit admission that critical documentation allegedly supporting *Ordinance 2025-05* either does not exist or would contradict the city's public claims. These admissions by default reveal substantive and procedural deficiencies that undermine the ordinance's validity and open multiple avenues for relief, from administrative remedies to judicial intervention. The ADACL process has established a clear record of non-compliance that strengthens subsequent enforcement actions under Chapter 119 and challenges to the ordinance itself.

Citations:

Cases:

Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010)

Vacation Ventures, Inc. v. Holiday Promotions, Inc., 687 So. 2d 286 (Fla. 5th DCA 1997)

Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984)

Siegmeister v. Johnson, 240 So. 3d 70 (Fla. 1st DCA 2018)

Public Health Trust of Dade Cnty. v. Valcin, 507 So. 2d 596 (Fla. 1987)

Consumer Rights, LLC v. Bradford County, 153 So. 3d 394 (Fla. 1st DCA 2014)

State v. Ashley, 701 So. 2d 338 (Fla. 1997)

Statutes:

Fla. Stat. § 119.07 (2023)

Fla. Stat. § 166.041(4)(a) (2023)

Constitutionally Yours, Signed , 03/26/2025
Geoffrey Caputo

MEMORANDA OF LAW IN SUPPORT OF ADMINISTRATIVE DEFAULT AT COMMON LAW

The Administrative Default at Common Law (ADACL) process, though unconventional, emerges as a valid administrative remedy, rooted in Florida's adoption of English common law and reinforced by statutory mandates and judicial precedents that address agency non-compliance. This memoranda demonstrates how ADACL leverages silence, default admissions, and adverse inferences to uphold transparency and accountability under Chapter 119, Florida Statutes.

Table of Authorities

	Authority	Explanation
Foundational Common Law Principles	<i>Fla. Stat. § 2.01</i>	Adopts English common law of general nature as of July 4, 1776, unless inconsistent with U.S. or Florida law. Establishes the foundational role of common law in Florida's legal system, providing the basis for principles like tacit acquiescence
	<i>Fla. Stat. § 775.01</i>	Applies English common law to crimes unless modified by statute, reinforcing the persistence of common law principles in Florida jurisprudence.
	<i>State v. Ashley, 701 So. 2d 338 (Fla. 1997)</i>	Affirms that common law principles persist unless expressly abrogated by statute, confirming their ongoing relevance in legal arguments.
	<i>State v. Mitchell, 245 So. 2d 618 (Fla. 1971)</i>	Cites Blackstone on common law rights, demonstrating the enduring influence of common law maxims in Florida courts.
	<i>City of Daytona Beach v. Del Percio (476 So. 2d 197 (1985))</i>	Supports common law viability alongside statutes when non-conflicting, per weakness B analysis.

Common Law Maxims	<i>Qui tacet consentire videtur</i>	<p>"He who is silent appears to consent." A core common law maxim establishing tacit acquiescence, where silence is interpreted as agreement or admission—key to default mechanisms.</p>
	<i>Qui tacet consentire videtur</i>	<p>"He who is silent appears to consent." A core common law maxim establishing tacit acquiescence, where silence is interpreted as agreement or admission—key to default mechanisms.</p>
	<i>Tacita quaedam habentur pro expressis</i>	<p>"Things silent are sometimes considered as expressed." Supports the notion that silence can imply consent, reinforcing the legal weight of non-response.</p>
	<i>Ejus est non nolle, qui potest velle</i>	<p>"He who may consent tacitly, may consent expressly." Validates tacit consent as legally binding, linking common law to procedural defaults.</p>
	<i>Blackstone's Commentaries, Book I, Section III</i>	<p>Explains that the authority of common law maxims stems from their consistent use in judicial practice and established custom, not from legislation. This is evident in Florida cases like Vacation Ventures (where silence shifts the burden of proof) and Horowitz (where silence implies acquiescence), demonstrating how courts apply maxims such as qui tacet to uphold their legal force</p>
Public Records Statutory Framework	<i>Fla. Stat. § 119.07(1)(a)</i>	<p>Mandates that public records be open for inspection and copying at any reasonable time, forming the statutory foundation for initiating a public records request.</p>

PR Framework, Cont'd	<i>Fla. Stat. § 119.07(1)(d)</i>	Instructs custodians to redact exempt portions and provide the remainder, ensuring partial compliance when full disclosure isn't possible.
	<i>Fla. Stat. § 119.07(1)(e)</i>	Requires a statement of the basis for complete exemption, ensuring transparency when records are withheld entirely.
	<i>Fla. Stat. § 119.07(1)(f)</i>	Holds that automatic delays impermissibly interfere with the public's right to prompt access, emphasizing the need for timely responses to requests.
	<i>Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984)</i>	Holds that automatic delays impermissibly interfere with the public's right to prompt access, emphasizing the need for timely responses to requests.
	<i>Consumer Rights, LLC v. Bradford County, 153 So. 3d 394 (Fla. 1st DCA 2014)</i>	Stresses prompt acknowledgment and good faith responses, setting expectations for custodial diligence.
	<i>Promenade D'Iberville, LLC v. Sundy, 145 So. 3d 980 (Fla. 1st DCA 2014)</i>	Permits delays only under limited circumstances, reinforcing the priority of promptness in public records access.
	<i>Siegmeister v. Johnson, 240 So. 3d 70 (Fla. 1st DCA 2018)</i>	Reiterates requirements for prompt attention and reasonable response times, aligning with statutory intent
	<i>Executive Office of Governor v. Florida Center for Government Accountability, Inc.</i>	Notes that the Public Records Act demands prompt attention and reasonable response times, further supporting timeliness obligations.
Affidavits : Evidentiary Role	<i>Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010)</i>	Holds that uncontradicted affidavits support findings for the affiant, establishing their legal weight in asserting facts (e.g., non-existence of records).

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Affidavits, Cont'd	<i>Holl v. Talcott</i> , 191 So. 2d 40 (Fla. 1966)	Highlights affidavits' importance in summary judgment, showing their role in establishing unopposed facts.
	<i>Nard, Inc. v. DeVito Contracting & Supply, Inc.</i> , 769 So. 2d 1138 (Fla. 2d DCA 2000)	Confirms that unrebutted affidavits are taken as true, critical for proving non-compliance in the default process.
Administrative Default Mechanisms	<i>Fla. Admin. Code R. 28-106.111(4)</i>	States that failure to request a hearing within the allotted time waives rights, leading to a final order—parallels common law default via non-response.
	<i>Fla. Admin. Code R. 12-6.003(3)</i>	Non-response to a tax assessment notice finalizes the assessment, illustrating administrative default in regulatory contexts.
	§ 212.12(5), <i>Fla. Stat</i>	Allows assessments based on available information if records aren't provided, supporting default mechanisms when evidence is withheld.
	<i>Dep't of Revenue v. Vanjaria Enters., Inc.</i> , 675 So. 2d 252 (Fla. 5th DCA 1996)	Upholds a default tax assessment for failure to provide records, applying administrative default principles.
	<i>Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd.</i> , 894 So. 2d 954 (Fla. 2005)	Affirms assessments based on available data, reinforcing administrative authority in default scenarios.
	<i>Cortiñas v. Dep't of Bus. & Prof'l Regulation</i> , 2019 WL 123456 (Fla. Div. Admin. Hearings 2019)	Upholds a default order for non-appearance, showing default's enforceability in administrative proceedings.
Tacit Acquiescence : Application of	<i>Vacation Ventures v. Holiday Promo.</i> , 687 So. 2d 286 (Fla. 5th DCA 1997)	Failure to rebut affidavits shifts the burden, reflecting "qui tacet" and tying common law to judicial outcomes

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<p>Tacit Acquiescence, Cont'd</p>	<p><i>Horowitz v. Laske, 855 So. 2d 169 (Fla. 5th DCA 2003)</i></p>	<p>Interprets silence as acquiescence in contracts, applying tacit acquiescence to modern disputes</p>
<p>Judicial Remedies & Standards of Review</p>	<p><i>Article V, Section 4(b)(3), Fla. Const.</i></p>	<p>Grants District Courts of Appeal authority to issue writs of prohibition, providing the jurisdictional basis for judicial remedies.</p>
	<p><i>Rule 9.030(b)(3), Fla. R. App. P.</i></p>	<p>Reaffirms the courts' power to issue writs of prohibition, enabling judicial intervention in administrative overreach.</p>
	<p><i>Fla. Stat. § 166.041(4)(a)(1-4)</i></p>	<p>Outlines procedural requirements for municipal ordinances, relevant to challenging ordinance validity based on missing documentation</p>
	<p><i>Heller v. Doe, 509 U.S. 312 (1993)</i></p>	<p>Illustrates rational basis review—government action is valid if rationally related to a legitimate interest—relevant to challenging ordinances.</p>
	<p><i>Craig v. Boren, 429 U.S. 190 (1976)</i></p>	<p>Establishes intermediate scrutiny, requiring a substantial relation to an important interest, applicable when rights are implicated but not fundamental.</p>
	<p><i>Loving v. Virginia, 388 U.S. 1 (1967)</i></p>	<p>Applies strict scrutiny, requiring narrow tailoring to a compelling interest, used when fundamental rights are at stake.</p>
	<p><i>Public Health Trust of Dade County v. Valcin, 507 So. 2d 596 (Fla. 1987)</i></p>	<p>Permits adverse inferences when evidence is withheld, strengthening petitions for judicial relief when records are missing.</p>
	<p><i>Martino v. Wal-Mart Stores, Inc., 908 So. 2d 342 (Fla. 2005)</i></p>	<p>Clarifies spoliation requirements for adverse inferences, supporting claims of missing evidence.</p>

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Judicial Remedies, Cont'd	<i>Golden Yachts, Inc. v. Hall</i> , 920 So. 2d 777 (Fla. 2d DCA 2006)	Applies adverse inferences to missing evidence, reinforcing their use in judicial proceedings
	<i>Hagopian v. Publix Supermarkets, Inc.</i> , 788 So. 2d 1088 (Fla. 4th DCA 2001)	Addresses adverse inferences in spoliation cases, emphasizing evidence preservation.
	<i>Sponco Mfg., Inc. v. Alcover</i> , 656 So. 2d 629 (Fla. 3d DCA 1995)	Discusses adverse inferences for withheld evidence, supporting judicial remedies.
	<i>Fla. Stat. § 119.12</i>	Mandates attorney's fees for unlawful withholding, providing a final enforcement mechanism for non-compliance.

I. ISSUES

(1): Are Florida public officials required to treat English common law as a binding legal authority?

(a)

(i) Fla. Stat. § 2.01: “The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this state.”

(ii) Fla. Stat. § 775.01: “The common law of England in relation to crimes [...] shall be of full force in this state where there is no existing provision by statute on the subject.”

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(iii): State v. Ashley, 701 So. 2d 338 (Fla. 1997): Affirms common law's persistence unless abrogated by statute.

(iv): Wilson v. Arkansas, 514 U.S. 927 (1995): Recognizes common law principles in Florida's legal framework.

(b):

Florida law explicitly incorporates English common law through *Fla. Stat. § 2.01*, making it binding unless contradicted by federal or state law. *Fla. Stat. § 775.01* extends this to criminal matters where statutes are silent, signaling a broad legislative intent to rely on common law. In *State v. Ashley*, the Florida Supreme Court confirmed that common law remains operative absent statutory override, while *Wilson v. Arkansas* illustrates its application by referencing historical common law principles (e.g., knock-and-announce rules). This framework mandates that public officials recognize English common law as authoritative in areas not addressed by statute, spanning civil, criminal, and administrative contexts.

(c): Florida public officials must recognize English common law as a binding legal authority where statutes are silent, as mandated by *Fla. Stat. § 2.01* and *Fla. Stat. § 775.01*, and affirmed by judicial precedent.

(2.1) Do common law maxims, as adopted in Florida, interpret silence as consent or an admission of fact?

(a):

(i) Qui tacet consentire videtur ("He who is silent appears to consent").

(ii) Tacita quaedam habentur pro expressis ("Things silent are sometimes considered as expressed").

(iii) Ejus est non nolle, qui potest velle ("He who may consent tacitly, may consent expressly").

(iv) Vacation Ventures v. Holiday Promo, 687 So. 2d 286 (Fla. 5th DCA 1997): Silence shifted the burden of proof.

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(v) Horowitz v. Laske, 855 So. 2d 169 (Fla. 5th DCA 2003): Silence interpreted as acquiescence in a contractual dispute.

(b): English common law maxims, adopted via Fla. Stat. § 2.01, establish that silence can signify consent or admission when a party has the chance to object but does not. Qui tacet consentire videtur underpins this principle, suggesting silence implies agreement. Florida courts have embraced this, as seen in *Vacation Ventures v. Holiday Promo*, where the court shifted the burden due to a party's silence, and *Horowitz v. Laske*, where silence was deemed acquiescence in a contract dispute. These cases reflect the maxims' integration into Florida law, showing silence as legally significant in the absence of rebuttal.

(c): Established common law maxims, recognized in Florida, interpret silence as consent or an admission of fact when a party fails to respond, as evidenced by judicial application.

(2.2) Do partial responses to certain document requests undermine the application of silence as consent for unanswered categories?

(a)

(i) Public Health Trust of Dade County v. Valcin, 507 So. 2d 596 (Fla. 1987): Adverse inferences apply when material evidence is withheld.

(ii) Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So. 2d 1138 (Fla. 2d DCA 2000): Unrebutted affidavits are accepted as true.

(b) A selective response while omitting other documents suggests strategic withholding rather than good-faith compliance. Per *Vacation Ventures (Id.)*, silence on specific points, not total non-response, triggers consent under *qui tacet consentire videtur*. *Valcin* supports adverse inferences for withheld material, and *Nard* reinforces this with the ADACL affidavit's documentation of non-compliance, establishing a pattern of evasion.

(c) A partial response does not negate silence as consent for unanswered categories; it reinforces default on those specific points.

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(3) Are Blackstone's Commentaries considered an authoritative source for interpreting common law maxims in Florida?

(a): Blackstone's Commentaries: A seminal work on English common law, frequently cited by Florida courts.

(i): State v. Mitchell, 245 So. 2d 618 (Fla. 1971): References Blackstone for common law interpretation.

(ii): Wilson v. Arkansas, 514 U.S. 927 (1995): Cites Blackstone as influential in Florida's legal system.

(b): Florida courts regularly turn to Blackstone's Commentaries to elucidate common law principles, affirming its authority. In *State v. Mitchell*, the court relied on Blackstone to define common law doctrines, while *Wilson v. Arkansas* used it to trace the origins of legal rules like knock-and-announce, demonstrating its relevance in Florida. Adopted through Fla. Stat. § 2.01, Blackstone's work provides a foundational lens for interpreting maxims, bridging historical English law to modern Florida practice.

(c): Florida law recognizes Blackstone's Commentaries as authoritative for interpreting common law maxims, as shown by consistent judicial reliance.

(4) Does Florida law validate common law maxims based on their historical custom and usage?

(a):

(i) Fla. Stat. § 2.01: Incorporates English common law, including its maxims.

(ii) Blackstone's Commentaries, Book I, Section III: "The only method of proving, that this or that maxim is a rule of the common law, is by showing that it hath been always the custom to observe it."

(iii) Vacation Ventures v. Holiday Promo, 687 So. 2d 286 (Fla. 5th DCA 1997): Applies maxims based on historical use.

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(iii) Horowitz v. Laske, 855 So. 2d 169 (Fla. 5th DCA 2003): Recognizes maxims' customary application.

(b) Per Fla. Stat. § 2.01, Florida adopts English common law, including maxims rooted in historical custom, as Blackstone articulates in Book I, Section III. This custom-based validation is evident in *Vacation Ventures v. Holiday Promo*, where the court applied *qui tacet consentire videtur* due to its longstanding use, and *Horowitz v. Laske*, where silence as consent reflected historical practice. These cases illustrate that Florida courts uphold maxims when their consistent historical application is demonstrated, aligning with Blackstone's standard.

(c) Florida law recognizes common law maxims based on their historical custom and usage, as supported by Fla. Stat. § 2.01 and judicial precedent.

(5.1) Does the concept of default admissions in ADACL align with Florida's administrative law practices?

(a)

(i) Fla. Admin. Code R. 28-106.111(4): "Failure to file a request for a hearing within the time prescribed shall constitute a waiver of the right to a hearing."

(ii) Fla. Admin. Code R. 12-6.003(3): "If the taxpayer does not timely file a protest, the assessment or refund denial shall become final."

(iii) Fla. Stat. § 212.12(5): "The department may use ... any available data to estimate the tax due."

(iv) Dep't of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996): Upholds default assessments for non-response.

Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd., 894 So. 2d 954 (Fla. 2005): Affirms assessments based on available data when records are withheld.

(b) Florida's administrative law explicitly supports default admissions when parties fail to act. *Fla. Admin. Code R. 28-106.111(4)* deems non-response a waiver of hearing rights, while *Fla. Admin. Code R. 12-6.003(3)* finalizes assessments absent a timely protest. Fla. Stat. § 212.12(5) permits tax estimations when taxpayers withhold data, effectively a default admission. In *Dep't of Revenue v. Vanjaria Enters., Inc.*, the court upheld a default assessment due to non-compliance, and *Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd.* reinforced this by affirming estimates based on available evidence. ADACL's

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use of default admissions—treating silence as consent or fact admission—mirrors these practices, leveraging non-response as a procedural consequence. These authorities collectively demonstrate that defaults are a recognized and enforceable mechanism in Florida’s administrative actions, supporting ADACL’s framework.

(c) The concept of default admissions in ADACL is consistent with Florida’s established administrative law practices, as evidenced by administrative codes and supporting case law.

(5.2) Are administrative defaults limited to codified contexts, making their extension to public records requests improper?

(a) Fla. Stat. § 2.01 (*common law in effect unless abrogated*) , Vanjaria, Nard, Inc. (Id.)

(b) Administrative defaults reflect a universal principle of consequences for non-response, per Fla. Stat. § 2.01. Vanjaria demonstrates this in tax contexts, applicable to public records due to structural similarities (formal demands with response duties). The ADACL affidavit, per Nard, provides specific evidence of non-compliance, extending general principles to this context.

(c) Administrative defaults in ADACL align with Florida law and extend appropriately to public records requests.

(6) Does ADACL improperly depend on judicial default judgments under Florida Rule of Civil Procedure 1.500?

(a)

(i) Florida Rule of Civil Procedure 1.500: Governs judicial default judgments when a party fails to plead or defend in court.

(ii) Fla. Admin. Code R. 28-106.111(4): Establishes waiver of rights for non-response in administrative proceedings.

(iii) Dep’t of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996): Upholds administrative defaults without judicial intervention.

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(b) ADACL operates in an administrative, not judicial, context, distinguishing it from Florida Rule of Civil Procedure 1.500, which applies solely to court proceedings requiring judicial oversight. Instead, ADACL aligns with administrative mechanisms like Fla. Admin. Code R. 28-106.111(4), where failure to respond waives rights without court involvement. *Dep't of Revenue v. Vanjaria Enters., Inc.* exemplifies this, affirming an administrative assessment finalized due to non-response, independent of Rule 1.500. ADACL's reliance on common law maxims (e.g., *qui tacet consentire videtur*) and administrative waiver further separates it from judicial defaults, rooting it in agency authority rather than courtroom procedure.

(c) ADACL does not improperly rely on judicial default judgments under Florida Rule of Civil Procedure 1.500; it is grounded in administrative law and common law principles, distinct from judicial processes.

(7.1) Is ADACL legally valid despite being an unconventional and experimental process?

(a)

(i) Fla. Stat. § 2.01: Adopts English common law where statutes are silent.

(ii) Fla. Stat. § 119.07(1)(a): “Every person who has custody of a public record shall permit the record to be inspected and copied ... at any reasonable time.”

(iii) Fla. Admin. Code R. 28-106.111(4): Waiver of rights for failure to request a hearing.

(iv) Fla. Admin. Code R. 12-6.003(3): Finalizes assessments absent timely protest.

(v) Fla. Stat. § 212.12(5): Allows tax estimates from available data.

(vi) Dep't of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996): Upholds administrative defaults.

(viii) Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd., 894 So. 2d 954 (Fla. 2005): Affirms defaults based on available data.

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(ix) Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010): Permits adverse inferences from un rebutted affidavits.

(b) ADACL's unconventional nature does not negate its validity, as it builds on established legal foundations. Fla. Stat. § 2.01 allows common law to fill statutory gaps, such as the lack of specific remedies for prolonged silence under Fla. Stat. § 119.07(1)(a) (public records access). ADACL's default mechanism aligns with Fla. Admin. Code R. 28-106.111(4) and Fla. Admin. Code R. 12-6.003(3), which treat non-response as waiver or finalization, and Fla. Stat. § 212.12(5), which permits agency action based on available data. Cases like Dep't of Revenue v. Vanjaria Enters., Inc. and Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd. validate administrative defaults, while Elliott v. Aurora Loan Servs., LLC supports drawing adverse inferences from silence—consistent with ADACL's approach. Though experimental, ADACL creatively applies these principles, making it a legitimate administrative remedy.

(c) The ADACL process is valid despite its unconventional and experimental nature, as it is supported by Florida's common law adoption, administrative law practices, and judicial precedent.

(7.2) Will courts reject ADACL for lacking precedent, favoring Chapter 119 remedies?

(a)

(i) State v. Ashley, 701 So. 2d 338 (Fla. 1997), Fla. Stat. § 2.01: Common law persists absent statutory repeal.

(ii) City of Daytona Beach v. Del Percio : Common law viable alongside statutes if non-conflicting.

(b) Fla. Stat. § 2.01 and State v. Ashley affirm common law's role where statutes are silent, like pre-litigation defaults. Del Percio supports ADACL as complementary to Chapter 119, addressing evidentiary gaps (e.g., non-compliance documentation) rather than conflicting with judicial remedies.

(c) Courts should accept The ADACL as a valid common law supplement to statutory remedies.

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(7.3) Is ADACL redundant given Chapter 119's mandamus and fee provisions?

(a)

(i) **Fla. Stat. § 119.07(1)(a)**: Requires prompt access, silent on pre-litigation defaults.

(ii) **State v. Ashley, Id.**

(b) Chapter 119 lacks pre-litigation consequences for partial compliance or refusal to admit non-existence (e.g., tally sheet zeros), a gap *State v. Ashley* allows common law to fill. ADACL's three-stage process creates an evidentiary record enhancing mandamus, not duplicating it.

(c) ADACL is not redundant; it addresses a distinct pre-litigation gap.

(7.3) Will courts require exhaustion of Chapter 119 remedies before ADACL inferences?

(a)

(i) **Fla. Stat. § 166.041(4)(a)**: Mandates Business Impact Estimates.

(ii) **Nard, Inc., Id.** Unrebutted affidavits establish facts.

(b) ADACL's three-stage process (Courtesy, Fault, Default) documents exhaustion efforts, per *Nard*. **Chapter 119 cannot compel admission of non-existence, a gap ADACL fills**, especially for Fla. Stat. § 166.041(4)(a) violations (e.g., missing BIE), providing specific statutory grounds for inferences.

(c) ADACL satisfies exhaustion via its process and addresses unique gaps.

(7.4) Does ADACL's goal of securing judicial recognition of an agency's refusal to confirm document non-existence (e.g., by marking "zeros" on a tally sheet) when no exemptions are claimed render it invalid, given mandamus's traditional role under Chapter 119?

(a) **Fla. Stat. § 119.07(1)(a)**: Mandates prompt access to records but is silent on compelling admissions of non-existence.

(a) **Fla. Stat. § 119.07(1)(e)**: Requires citation of exemptions for withholding, implying a duty to clarify non-existence when no exemptions apply.

(b) **State v. Ashley, 701 So. 2d 338 (Fla. 1997)**: Common law fills statutory gaps unless abrogated.

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(c) **Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So. 2d 1138 (Fla. 2d DCA 2000):** Unrebutted affidavits establish facts, supporting evidentiary recognition.

(d) **Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010):** Uncontradicted affidavits support findings, applicable to judicial recognition of non-compliance.

- (b) Mandamus under Chapter 119 typically compels production of existing records or forces an agency to justify withholding via exemptions (Fla. Stat. § 119.07(1)(e)). However, it lacks a mechanism to address an agency's refusal to affirmatively state that requested records (e.g., health studies, BIEs) do not exist, especially when no exemptions are claimed. This refusal—evidenced by the city's failure to mark "zeros" despite multiple notices—creates a transparency gap that Fla. Stat. § 119.07(1)(a) doesn't resolve. Per *State v. Ashley*, common law can bridge this gap. ADACL's three-stage process documents this refusal under oath (Nard), enabling courts to recognize it as a fact (Elliott), not just compel production. This evidentiary role distinguishes ADACL from mandamus, aligning with its unconventional yet valid purpose of establishing non-existence rather than forcing disclosure.
- (c) ADACL's focus on judicial recognition of non-existence is legally valid, addressing a gap mandamus cannot fill, supported by common law and evidentiary principles.

(8.1) Can adverse inferences be drawn about the legitimacy of an agency's ordinances or actions due to its non-response, partial fulfillment, lack of relevant documents, and non-compliance with Chapter 119 protocols?

(a)

(i) **Fla. Stat. § 119.07(1)(a):** Mandates public records be open for inspection at reasonable times.

(ii) **Fla. Stat. § 119.07(1)(c):** Requires prompt acknowledgment and good faith response.

(iii) **Fla. Stat. § 119.07(1)(d):** Instructs redaction of exempt portions, providing remainder.

(iv) **Fla. Stat. § 119.07(1)(e):** Requires statutory citation for complete exemptions.

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(v) Fla. Stat. § 119.07(1)(f): Mandates written explanation for exemptions.

(vi) Fla. Stat. § 119.12: Imposes attorney's fees for unlawful withholding.

(vii) Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984): Prohibits automatic delays.

(viii) Promenade D'Iberville, LLC v. Sundy, 145 So. 3d 980 (Fla. 1st DCA 2014): Limits delays to retrieval and redaction.

(ix) Consumer Rights, LLC v. Bradford County, 153 So. 3d 394 (Fla. 1st DCA 2014): Condemns unjustified delays and demands good faith.

(x) Siegmeister v. Johnson, 240 So. 3d 70 (Fla. 1st DCA 2018): Affirms reasonable response times (e.g., two weeks).

(xi) Executive Office of Governor v. Florida Center for Government Accountability, Inc., -So. 3d - (Fla. 1st DCA 2025): Upholds two-week partial production as reasonable.

(xii) Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010): Permits adverse inferences from un rebutted affidavits.

(xiii) Heller v. Doe, 509 U.S. 312 (1993): Requires rational basis for governmental action.

(xiv) Craig v. Boren, 429 U.S. 190 (1976): Demands substantial relation to a government interest.

(xv) Loving v. Virginia, 388 U.S. 1 (1967): Requires compelling interest and narrow tailoring.

(b) Agency opaqueness—non-response, partial fulfillment, irrelevant production, and non-compliance with Fla. Stat. § 119.07(1)(a) (prompt access), (1)(c) (good faith), (1)(d)-(f) (redaction and explanation)—violates statutory duties, as reinforced by *Tribune Co. v. Cannella* (no delays), *Promenade D'Iberville* (limited delays), and *Consumer Rights* (good faith required). *Siegmeister* and *Executive Office of Governor* establish two weeks as a reasonable response benchmark, yet persistent silence exceeds this. Under *Elliott v. Aurora*

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Loan Servs., un rebutted affidavits asserting non-existence of records provide prima facie evidence, permitting adverse inferences. This opaqueness suggests no documentation supports the agency's actions, undermining their legitimacy under *Heller v. Doe* (rational basis), *Craig v. Boren* (substantial relation), and *Loving v. Virginia* (compelling interest, narrowly tailored), as no evidence rebuts the inference of arbitrariness. Fla. Stat. § 119.12 further penalizes such withholding, bolstering the inference's weight.

(c) Agency opaqueness allows adverse inferences that their ordinances or actions lack a legitimate basis, as supported by Chapter 119 violations, Elliott's evidentiary rule, and constitutional scrutiny standards.

(8.2) Do courts require bad faith beyond silence, with partial responses negating default?

(a) *Valcin, Id.* Adverse inferences from withheld evidence.

(b) *Valcin* focuses on control over evidence, not bad faith, applicable to withheld critical categories, Partial responses to less material requests versus omission of key documents (*Ex. Business Impact Estimates/Public Health Data/Declining Property Values*) suggest strategic withholding, not good faith.

(c) Adverse inferences are justified by strategic withholding, not requiring bad faith.

(9) CONCLUSION:

(a) The Administrative Default at Common Law (ADACL) process, while unconventional, is a valid administrative remedy substantiated by a robust interplay of Florida statutes, common law principles, and judicial precedent. Florida public officials must recognize

English common law as binding under Fla. Stat. § 2.01 and § 775.01, as affirmed by *State v. Ashley* and *Wilson v. Arkansas* [(1)]. This includes established maxims like *qui tacet consentire videtur*, which interpret silence as consent or admission, as applied in *Vacation Ventures v. Holiday Promo* and *Horowitz v. Laske* [(2)]. Florida law further acknowledges Blackstone's Commentaries as authoritative for interpreting these maxims (*State v. Mitchell*, *Wilson v. Arkansas*) [(3)] and validates them based on historical custom and usage, per Blackstone's own standard (*Vacation Ventures*, *Horowitz*) [(4)].

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(b) In administrative contexts, ADACL’s default admissions align with Florida practices, such as waivers and final assessments for non-response under Fla. Admin. Code R. 28-106.111(4), R. 12-6.003(3), and Fla. Stat. § 212.12(5), upheld in *Dep’t of Revenue v. Vanjaria Enters.* and *Florida Dep’t of Revenue v. New Sea Escape Cruises* [(5)]. ADACL does not improperly rely on judicial defaults under Florida Rule of Civil Procedure 1.500, instead rooting itself in administrative and common law mechanisms [(6)]. Despite its novelty, ADACL’s validity is supported by this legal foundation, including *Elliott v. Aurora Loan Servs.*’s adverse inference rule [(7)]. Finally, agency opaqueness—non-response, partial fulfillment, and non-compliance with Chapter 119 protocols—permits adverse inferences about the legitimacy of their actions, per *Elliott*, *Heller v. Doe*, *Craig v. Boren*, and *Loving v. Virginia*, reinforcing ADACL’s utility [(8)]. Together, these principles affirm ADACL as a legitimate, informal administrative tool to address agency silence.

II. Response Guide

Knowing how novel, unconventional, experimental, and informal is the ADACL premise, this **Response Guide** is submitted in good faith to facilitate constructive dialogue regarding the Notice of Administrative Default at Common Law (ADACL) concerning Public Records Request PRR2025-22. The guide aims to clarify positions, invite feedback, and refine mutual understanding while maintaining dignity, professionalism and respect.

Please attach / remit separate document if necessary, indexing each alphanumeric paragraph and subparagraph should exception be taken at any point. If any of the following are in question, note that each response guide number below corresponds with the aforementioned Issue numbers above, with the same citations of law. Referring to the Table Of Authorities may also be more expedient.

(1) Must Florida Public Officials Recognize The Common Law Of England As A Binding Legal Authority?

- (a) **Legal Basis:** *Fla. Stat. § 2.01, Fla. Stat. § 775.01, State v. Ashley, 701 So. 2d 338 (Fla. 1997), Wilson v. Arkansas, 514 U.S. 927 (1995)*

MEMORANDA OF LAW IN SUPPORT OF ADMINISTRATIVE DEFAULT AT COMMON LAW

(b) **Discussion:** Florida law incorporates English common law as a foundational source where statutes don't provide specific guidance. This suggests officials should consider common law principles in their duties.

(c) **Feedback:**

☐ Agree

☐ Disagree with Contradictory Analysis:

(2) Do Established Common Law Maxims Interpret Silence As Consent Or An Admission Of Fact?

(a) **Legal Basis:**

- *Qui tacet consentire videtur, Tacita quaedam habentur pro expressis, Ejus est non nolle, qui potest velle, Vacation Ventures v. Holiday Promo., 687 So. 2d 286 (Fla. 5th DCA 1997), Horowitz v. Laske, 855 So. 2d 169 (Fla. 5th DCA 2003), Public Health Trust of Dade County v. Valcin, 507 So. 2d 596 (Fla. 1987), Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So. 2d 1138 (Fla. 2d DCA 2000)*

(b) **Discussion:**

- (i) Common law maxims and Florida cases suggest silence implies consent or admission when response is possible but absent.
- (ii) **Addressing Partial Response Challenge:** If only a selective response is provided; while others are withheld, or not admitted as non-existent, such doesn't negate consent for unanswered points. *Vacation Ventures* applies *qui tacet* to specific silences, *Valcin* draws inferences from withheld evidence, and *Nard* accepts affidavit-documented evasion as fact.

(c) **Feedback:**

☐ Agree

☐ Disagree with Contradictory Analysis:

(3) Does Florida Law Recognize Blackstone's Commentaries As Authoritative For Interpreting Common Law Maxims?

(a) **Legal Basis:** *State v. Mitchell, 245 So. 2d 618 (Fla. 1971), Wilson v. Arkansas, 514 U.S. 927 (1995)*

MEMORANDA OF LAW IN SUPPORT OF ADMINISTRATIVE DEFAULT AT COMMON LAW

(b) **Discussion:** Florida courts often cite Blackstone's Commentaries when interpreting common law, which serves as evidence of its authority.

(c) **Feedback:**

- ☐ Agree
- ☐ Disagree with Contradictory Analysis:

(4) Does Florida Law Recognize Common Law Maxims Based On Their Historical Custom And Usage?

(a) **Legal Basis:** *Fla. Stat. § 2.01, Blackstone's Commentaries, Vacation Ventures v. Holiday Promo, 687 So. 2d 286 (Fla. 5th DCA 1997), Horowitz v. Laske, 855 So. 2d 169 (Fla. 5th DCA 2003)*

(b) **Discussion:** Florida law accepts maxims based on their historical use, as Blackstone suggests and courts have applied.

(c) **Feedback:**

- ☐ Agree
- ☐ Disagree with Contradictory Analysis:

(5) Is the Concept of Default Admissions, as Used in ADACL, Consistent with Established Administrative Law Practices in Florida?

(a) **Legal Basis:** *Fla. Admin. Code R. 28-106.111(4), Fla. Admin. Code R. 12-6.003(3), Fla. Stat. § 212.12(5), Dep't of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996), Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd., 894 So. 2d 954 (Fla. 2005), Fla. Stat. § 2.01, Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So. 2d 1138 (Fla. 2d DCA 2000)*

(b) **Discussion:**

- (i) Florida's administrative rules and cases support default admissions as a matter of so stated "*custom and usage*" under common law when parties don't respond, consistent with ADACL.

MEMORANDA OF LAW IN SUPPORT OF ADMINISTRATIVE DEFAULT AT COMMON LAW

- (ii) **Addressing Limited Application:** Defaults aren't limited to codified contexts; *Fla. Stat. § 2.01* extends common law principles universally, *Vanjaria* applies them administratively, and *Nard* supports affidavit-based extensions to public records.

(c) **Feedback:**

- ☐ Agree
- ☐ Disagree with Contradictory Analysis:

(6) Does ADACL Improperly Depend on Judicial Default Judgments Under Florida Rule of Civil Procedure 1.500?

- (a) **Legal Basis:** *Florida Rule of Civil Procedure 1.500, Fla. Admin. Code R. 28-106.111(4), Dep't of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996).*
- (b) **Discussion:** ADACL operates administratively, distinct from Rule 1.500's judicial scope, aligning with Fla. Admin. Code R. 28-106.111(4)'s waiver and Vanjaria's administrative default precedent.

(c) **Feedback:**

- ☐ Agree
- ☐ Disagree with Contradictory Analysis:

(7) Is ADACL Legally Valid Despite Being an Unconventional and Experimental Process?

- (a) **Legal Basis:** *Fla. Stat. § 2.01, Fla. Stat. § 119.07(1)(a), Fla. Admin. Code R. 28-106.111(4), Fla. Admin. Code R. 12-6.003(3), Fla. Stat. § 212.12(5), Dep't of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996), Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd., 894 So. 2d 954 (Fla. 2005), Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010), State v. Ashley, 701 So. 2d 338 (Fla. 1997), City of Daytona Beach v. Del Percio (476 So. 2d 197 (1985) Fla. Stat. § 166.041(4)(a), Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So. 2d 1138 (Fla. 2d DCA 2000)*

MEMORANDA OF LAW IN SUPPORT OF ADMINISTRATIVE DEFAULT AT COMMON LAW

(b) Discussion:

- (i) ADACL's validity rests on common law (*Fla. Stat. § 2.01*), administrative defaults (*Vanjaria, New Sea Escape*), and evidentiary support (*Elliott*), despite its novelty.
- (ii) **Addressing Judicial Reception:** *State v. Ashley* and *Del Percio* affirm common law's role alongside statutes, making ADACL complementary.
- (iii) **Addressing Redundancy:** *State v. Ashley* fills Chapter 119's pre-litigation gap, enhanced by ADACL's process.
- (iv) **Addressing Exhaustion:** The three-stage process and *Nard* affidavits satisfy exhaustion, with *Fla. Stat. § 166.041(4)(a)* providing specific grounds.
- (v) **Addressing Mandamus Limitation:** Unlike mandamus, which seeks production, ADACL seeks recognition of refusal to admit non-existence, documented via affidavits (*Nard, Elliott*), making it a distinct and necessary tool.

(c) Feedback:

- ☐ Agree
- ☐ Disagree with Contradictory Analysis:

(8) Can Adverse Inferences Be Drawn About the Legitimacy of an Agency's Ordinances or Actions Due to Its Non-Response, Partial Fulfillment, Lack of Relevant Documents, and Noncompliance with Chapter 119 Protocols?

- (a) **Legal Basis:** *Fla. Stat. § 119.07(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), Fla. Stat. § 119.12, Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984), Promenade D'Iberville, LLC v. Sundy, 145 So. 3d 980 (Fla. 1st DCA 2014), Consumer Rights, LLC v. Bradford County, 153 So. 3d 394 (Fla. 1st DCA 2014), Siegmeister v. Johnson, 240 So. 3d 70 (Fla. 1st DCA 2018), Executive Office of Governor v. Florida Center for Government Accountability, Inc., Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010), Heller v. Doe, 509 U.S. 312 (1993), Craig v. Boren, 429 U.S. 190 (1976), Loving v. Virginia, 388 U.S. 1 (1967), Public Health Trust of Dade County v. Valcin, 507 So. 2d 596 (Fla. 1987), Fla. Stat. § 166.041(4)(a)*

MEMORANDA OF LAW IN SUPPORT OF ADMINISTRATIVE DEFAULT AT COMMON LAW

(b) Discussion:

(i) Non-compliance (*Fla. Stat. § 119.07*) and silence (*Elliott*) permit inferences of illegitimacy under scrutiny standards (*Heller, Craig, Loving*).

(ii) **Addressing Bad Faith vs. Silence:** Valcin infers from withheld evidence (e.g., Fla. Stat. § 166.041(4)(a) BIE), not requiring bad faith, given strategic omissions.

(c) Feedback:

- ☐ Agree
- ☐ Disagree with Contradictory Analysis:

CONCLUSION

This guide aims to clarify the legal basis for the ADACL and invites constructive feedback to refine our mutual understanding. Please provide your responses to each section, and if disagreeing, then indexing each alphanumeric point/sub point in the attached response with analysis, and feel free to include any additional insights or legal analyses that may contribute to a more comprehensive discussion.

Thank you for your attention to this matter. We look forward to your response and to working collaboratively towards a resolution.

Sincerely,



Geoffrey Jacob Caputo, March 26, 2025

EXHIBIT H:
2nd
REACTIVE/PARTIAL
RECORD
FULFILLMENT
BY CITY OF ST PETE
BEACH.

*Please refer to separate attachment for all
documents provided

Additional Records



Inbox



Ariana Wilson (S... 3:24 PM



to me, BVose ▾

Good afternoon Mr. Caputo,

Additional documents have been uploaded for this request and can be found under the 'response docs' section.

Thank you,

City Clerk's Office

City of St. Pete Beach

Exhibit I:

THANK YOU LETTER 2

FOR 2nd

REACTIVE/PARTIAL

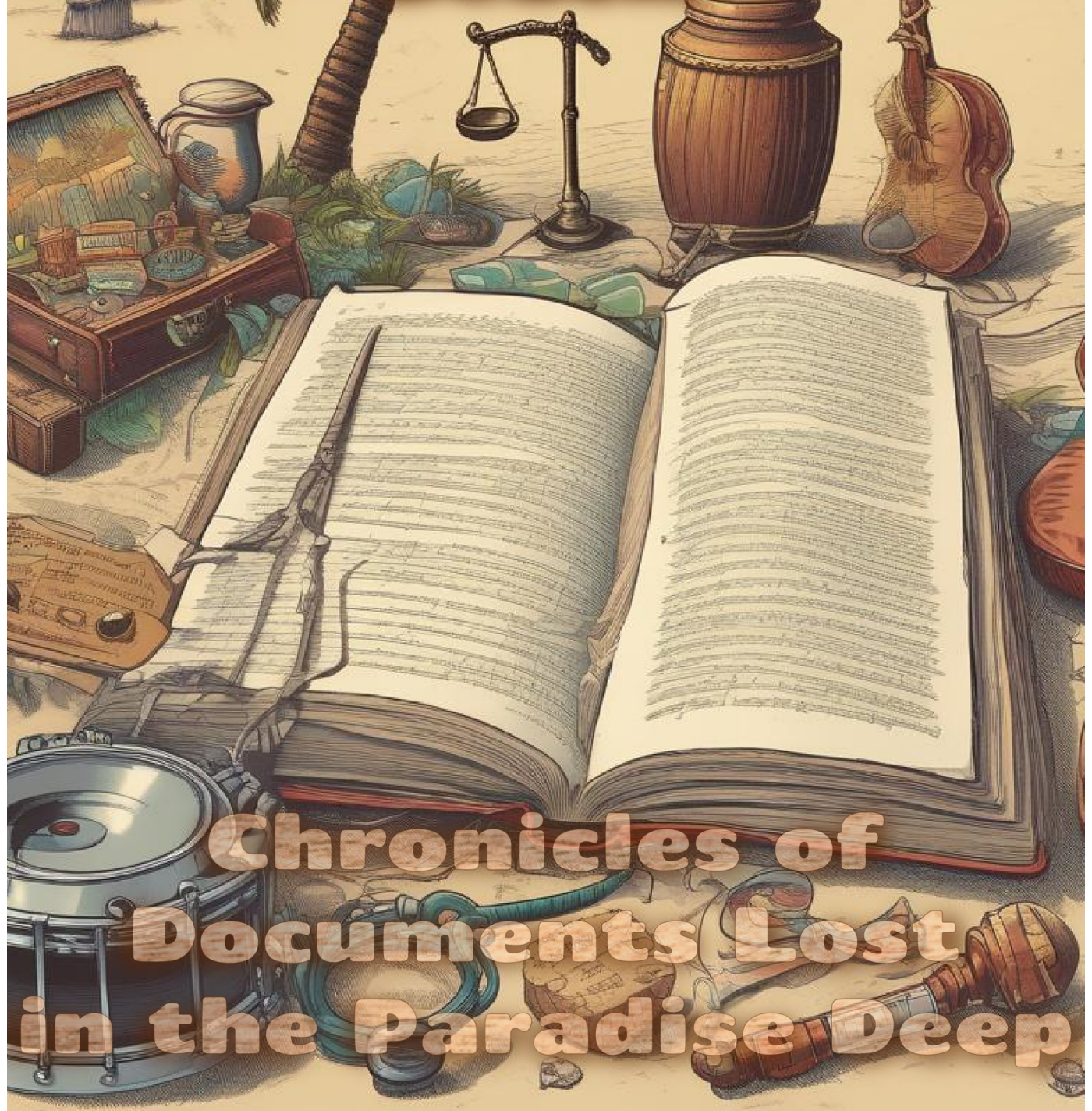
FULFILLMENT WITH

ANALYSIS

AND TABLE OF ALL

RECORDS SENT

Cascade of Absence: The City of St. Pete Beach,



Chronicles of
Documents Lost
in the Paradise Deep

PRR2025-22 Thank You Letter For 2nd Partial & Reactive Production

Amber LaRowe
City Clerk
155 Corey Avenue
St. Pete Beach, FL 33706
April 7, 2025

USPS Cert: 9589 0710 5270 1053 4637 02

CORRESPONDENCE:

Geoffrey Caputo
4604 49TH ST. N #140
Kenneth City, FL 33709
floridarepublic@gmail.com

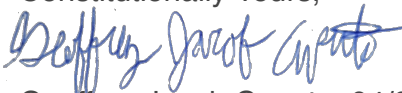
Greetings City Clerk LaRowe, (*Notice To Principle Is Notice To Agent/Notice To Agent Is Notice To Principle*):

Deputy Clerk Wilson's email with a link to "Additional Records" on March 28, 2025, was a treat—dropped just hours after a "FB Blast" video documenting the City's Administrative Default at Common Law. This, as a matter of only the most exemplary good faith §119.07(1)(c) protocols, followed the first partial/reactive production on March 11—one (1) day after receiving the Notice of Fault, and only a mere 32 days of City silence post-PRR2025-22. This second gesture of compliance should be a model in American civics classes as a "*Paragon of Government Transparency*"—a masterclass in improvising, adapting, and overcoming under pressure.

Attached, for clerical amusement, is *The Cascade of Absence: City of St. Pete Beach Noise Ordinance Documents Request PRR2025-22*. It's not my finest work, but it's worthy of an honorable mention. This coffee table/restroom read (*depending on the time of day*) explains why the records can't prop up Ordinance 2025-05's claims from the January 28, 2025, Agenda Packet—and spotlights the gaps where documents should be. Up front, for convenience and sautéed in a transparency and good faith bisque, is the "*Good Ole Tally Table*" on the menu - begging for those sweet "zeros", (0's) to mark non-existence or as a "non-record" as they say in United States Jurisprudence. Spoiler: they're still missing.

The manifold oversights in affirming the state of documents with 'zeros' for DR3, DR4, and DR6 (or any reasonable likeness in place of the tally table) do hinder the proving of Ordinance 2025-05's foundation, transgressing against the statutes of Florida, even Fla. Stat. § 119.07(1)(a), (c), (e), (f) and § 119.01(1). This veil of darkness doth weaken the trust of the people, as the Second District Court of Appeal hath proclaimed in Times Publishing Co. v. Williams, 222 So. 2d 470, 473 (Fla. 2d DCA 1969): 'Verily, the public hath a right to know the deeds of their rulers, and this right standeth to thwart such governance as engendereth mistrust.' Mediation doth loom like a tempest o'er the horizon—prithee, take heed of this portent, lest thou be found unprepared.

Constitutionally Yours,



Geoffrey Jacob Caputo, 04/07/2025

ATTACHED:

The Cascade of Absence : City of St Pete Beach Noise Ordinance Documents Request PRR2025-22

cc: Mayor Petrilla, Karen Marriott, District 1 / Lisa Robinson, District 2 / Betty Rzewnicki, District 3 / Joe Moholland District 4 / Ralf Brooks, Interim City Attorney

The Cascade of Absence :
City of St Pete Beach Noise Ordinance Documents Request
PRR2025-22 - Analysis, and Research by Geoffrey J. Caputo, B.F.A. / USF '98

CATEGORY	EXEMPT? Y OR N	2021	2022	2023	2024	2025	CHECK OFF
DR1: HEALTH IMPACT STUDIES (HIS)							
a: Documentation or research cited by the City Commission to support health impact claims				Staff Report (Dec 2023) - Page 6 mentions noise mitigation but no studies		1.EPA Report (1974) - General health data (Reference) 2.EPA Brochure: "The Environmental Frontier: Noise Control" 3. Noise Ord 2025-05 First Reading (2025)	Partial (2023) -1. No actual studies, just mitigation mention; EPA report is outdated and non-specific 2.Focused on careers, lacks relevant data or analysis
b: Health Impact Data (local, regional)							
DR2: COMMUNITY FEEDBACK RECORDS (CFR)							
c. Complaints, surveys, town hall minutes, public comments (last 3 years)				DR2.1 (Micklitsch, Sep 2023) - Slide 3: 11 complaints; Slide 5: resident quotes DR2.2 (Hysell, Sep 2023) - Slide 3: complaints; Slide 6: quotes DR2.3 (Letters, Dec 2023) - Pages 11-25: opposition letters DR2.4 (Correspondence, Nov-Dec 2023) - Pages 2, 3, 5: opposition emails			Received (2023) - Complaints and comments from 2023 only
d. Feedback on quality of life, health, or property values				DR2.1 - Slide 5: sleep disruption DR2.2 - Slide 6: sleep, Slide 9: property values DR2.3 - Pages 12, 15, 19: peace/sleep DR2.4 - Pages 2, 5: peace/sleep			Received (2023) - Specific impacts noted
e. Digital records (emails, social media)				DR2.4 - Emails from Nov-Dec 2023			Received (2023) - Emails only

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City of St Pete Beach Noise Ordinance Documents Request
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DR3: ECONOMIC IMPACT ASSESSMENTS (EIA)							
f. Studies linking noise to property value depreciation							
g. Historical Property Value Data (assessments, tax records)							
h. Appraisal Reports							
i. Comparative Sales Data							
j. Real Estate Market Analyses							
k. Noise Level Measurements (correlated with property values)							
l. Expert Testimonies or Opinions							
m. Public Feedback on Property Values				DR2.2 - Slide 9: property values mentioned (2023)			PARTIAL (2023) - ANECDOTAL MENTION, NO STUDY
n. Business Impact Studies (economic/ property value link)							
o. Zoning and Development Impact				DR1 - Zoning discussion (Dec 2023)			PARTIAL (2023) - ZONING CONTEXT, NO VALUE IMPACT
p. Academic/ Industry Research							

The Cascade of Absence :
City of St Pete Beach Noise Ordinance Documents Request
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q. Mitigation Efforts (before/ after studies)				DR1 - Page 6: mitigation wall (Dec 2023)			PARTIAL (2023) - MITIGATION NOTED, NO VALUE STUDY
DR4: LEGAL MEMOS OR OPINIONS (LMO)							
Legal analysis or correspondence						Agenda Report (2025) Summarizes legal rationale Dooley's Paper (Reference) - Legal precedents, not specific Vose's Presentation (2025) - Legal aspects, no enforcement data Legal Opinion (2025) - Constitutionality, limited analysis	PARTIAL (2025) - Legal rationale provided but incomplete analysis
DR5: ENFORCEMENT RECORDS (ER)							
Citations issued per year			DR5 - Noise surveys (2022-2023), no citation counts				PARTIAL (2022-2023) - NO SPECIFIC CITATION DATA
Locations of frequent violations			DR5 - 2007 Pag Way (2022-2023)				RECEIVED (2022-2023) - SPECIFIC LOCATION - NOT CITY WIDE DATA
Outcomes of enforcement actions				DR5 - "Potential violation" (page 16, 2023), no outcomes			PARTIAL (2023) - NO RESOLUTION DETAILS

The Cascade of Absence :
City of St Pete Beach Noise Ordinance Documents Request
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Reviews of enforcement effectiveness							
GIS mapping or visualizations							
DR6: BUSINESS IMPACT ESTIMATES (BIE)						Ord 2025-05 BIS (2025) Vague and narrow analysis	PARTIAL (2025) - BIE provided but criticized for vagueness
Complete BIE under Florida Statute 166.041(4)							
Analyses/ projections on business effects							
Business Impact Studies (economic/ property value link)							
Data/models on revenue, traffic, costs							
Correspondence/ meeting minutes							
Consultations with business organizations							

The Cascade of Absence :
City of St Pete Beach Noise Ordinance Documents Request
PRR2025-22 - Analysis, and Research by Geoffrey J. Caputo, B.F.A. / USF '98

I. Overview of the Agenda Packet Claims

The agenda packet for Ordinance 2025-02 (dated January 28, 2025) purports the basis for the new noise ordinance with four key claims:

1. **Health Impacts:** Excessive noise causes sleep disturbance, stress-related illnesses, and hearing loss, necessitating decibel limits to protect residents (*pages 5, 7*).
2. **Property Values:** Persistent noise reduces property values and affects economic stability (*pages 6, 8*).
3. **Community Feedback:** Numerous resident complaints over recent years demand stricter noise controls (*pages 4, 9*).
4. **Enforcement Needs:** The current ordinance lacks measurable standards, hindering enforcement (*pages 5, 10*).

These claims suggest a city-wide problem requiring a broad regulatory response. Let's evaluate how the provided documents from The City of St. Pete Beach support—or fail to support—these assertions.

The resulting documents request from PRR2025-22 should demonstrate the Legal Compliance issues:

- **Fl. Stat. §119.07(1)(c):** Their Response after 21 business days (February 5 to March 11, 2025) exceeds the 10-business day / 2 Calendar weeks precedent (*see Executive Office of the Governor, and Governor Ron DeSantis v. Florida Center for Government*

**The Cascade of Absence :
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Accountability, Inc 1D2022-3507; (1st DCA); Siegmeister v. Johnson, 240 So. 3d 70 (Fla. 1st DCA 2018), partially compliant with DR1's provision, but late.

- Incomplete without a tally sheet or DR3, DR4, DR6 status - lack of clarity per Fl. Stat. §119.07(b).
- Barely statute conforming Business Impact Estimate ("BIE" - *Fl. Stat. 166.041(4)(a)1-4*).

II. 1st Round of Documents sent 3/11/2025

See Attached 3/11/2025 Tally Table For Reference

- (1) **SPB DOC1**: A 29-page staff report (not just a presentation) for Case No. 23034, a Development Review application for a mixed-use project at 7701 Blind Pass Road, St. Pete Beach, dated December 13, 2023, **over a year before Ordinance 2025-02's first reading**

(a) Key Points:

Page 6: Under "Neighborhood Compatibility," it discusses noise from a proposed restaurant's outdoor seating and amplified music, mitigated by a 6-foot masonry wall, a 10-foot setback, and compliance with the city's then-existing noise ordinance (Sec. 46-137). It notes the wall reduces noise levels below ordinance limits at property lines.

(b) Other Relevant Pages:

- (i) **Page 2:** Summarizes the project (hotel, restaurant, residential units) and mentions noise as a consideration.
- (ii) **Page 11:** Mentions a noise study requirement for amplified music permits, referencing Sec. 46-141(g), but no study is included.
- (iii) **Page 24:** Notes public comments, including noise concerns from nearby residents, but no health data.

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(c) General Scope: Focuses on zoning approval, site plan compliance, and mitigation measures, not health impacts of noise beyond ordinance adherence.

(d) How It Could Not Be Responsive:

- (i) Not a Health Study:** This is a staff report for a specific development, not a formal Health Impact Study with scientific data (e.g., noise levels' effects on sleep, stress). It focuses on zoning compliance, not health analysis, missing the depth of the request sought.
- (ii) Temporal Misalignment:** Dated 2023, it predates Ordinance 2025-02's drafting and doesn't address the new decibel-based standards or health claims from January 2025.
- (C) Limited Scope:** Noise is a compliance checkbox (e.g., wall height), not a health study. The referenced noise study (page 11) isn't included, leaving a gap.

(2) SPB DOC 2.1 (Community Feedback and Health.): A slide deck titled "Red White And Booze by Bob Micklitsch," presented to the City Commission on September 11, 2023 **16 months before Ordinance 2025-02's first reading**. Focuses on RWB's noise issues, community feedback, and regulatory history, predating Ordinance 2025-02's first reading (January 28, 2025).

(a) Key Points:

- (i) Slide 1:** Title page with date and presenter.
- (ii) Slide 2:** Lists RWB's address (5501 Gulf Blvd) and describes it as a live music venue with a history of noise complaints.
- (iii) Slide 3:** Mentions 11 noise complaints from January to September 2023, with a graph showing complaint frequency.

The Cascade of Absence :
City of St Pete Beach Noise Ordinance Documents Request
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- (iv) Slide 4:** Notes RWB's operation under a Special Magistrate Order limiting music to 11 PM, with violations cited.
- (v) Slide 5:** Highlights community impact, including resident quotes about noise disrupting sleep and quality of life.
- (vi) Slide 6:** Discusses prior noise ordinance (pre-2025-02), suggesting it was ineffective.
- (vii) Slide 7:** Proposes stricter enforcement or ordinance updates, referencing ongoing issues.
- (viii) Slide 8:** Concludes with a call for commission action on noise control.

(b) How It Could Not Be Responsive: *(same legal compliance issues as in (1)(D))*

- (I) Timing Misalignment:** Dated September 2023, it precedes Ordinance 2025-02's drafting and first reading (January 2025). Document request targeted feedback related to the ordinance's development or first reading, not prior issues.
- (II) Specificity:** Focuses on RWB, not the broader city-wide noise policy Ordinance 2025-02 addresses. It's venue-specific feedback, not ordinance-specific.
- (III) Not Comprehensive:** Captures complaints from one source (RWB) over 9 months, not a full record of community input across St. Pete Beach for the ordinance.

(c) Other Notes:

- (i) Precursor Role:** While not directly about Ordinance 2025-02, it reflects community noise concerns that may have prompted its creation, offering historical context.

The Cascade of Absence :
City of St Pete Beach Noise Ordinance Documents Request
PRR2025-22 - Analysis, and Research by Geoffrey J. Caputo, B.F.A. / USF '98

- (ii) **Partial Response:** DR2 aligns with community feedback but doesn't cover DR3, DR4, DR6, leaving the "completed" claim incomplete

(3) SPB DOC 2.2:

A slide deck titled "Red, White & Booze Noise Violations by Kenneth Hysell," presented to the City Commission on September 11, 2023 - 16 months before Ordinance 2025-02's first reading. Focuses on RWB's noise violations, resident complaints, and regulatory context, predating Ordinance 2025-02's first reading (January 28, 2025).

(a) Key Points:

- (i) **Slide 2:** Introduces RWB (5501 Gulf Blvd) as a live music venue with a history of noise issues.
- (ii) **Slide 3:** Lists 11 noise complaints from January to August 2023, with dates and times (e.g., 1/13/23 at 10:23 PM).
- (iii) **Slide 4:** Details a Special Magistrate Order (May 2023) limiting music to 11 PM, citing violations.
- (iv) **Slide 6:** Quotes residents (e.g., "Music so loud I can't sleep," "Noise is unbearable"), showing community impact.
- (v) **Slide 8:** Includes a map of complaint locations near RWB.
- (vi) **Slide 10:** Cites the existing noise ordinance (Sec. 46-137), noting its inadequacy.
- (vii) **Slide 14:** Suggests ordinance updates or enforcement changes, linking to ongoing noise problems.
- (viii) **Slide 16:** Ends with a call for commission action.

(b) How It Could Not Be Responsive:

- (I) **Temporal Gap:** From September 2023, it predates Ordinance 2025-02's drafting and first reading (January 2025)..

The Cascade of Absence :
City of St Pete Beach Noise Ordinance Documents Request
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(II) Venue-Specific: Focuses solely on RWB, not broader community input across St. Pete Beach relevant to the city-wide ordinance.

(III) Incomplete Scope: While it's feedback, it's not a comprehensive record of all community input for Ordinance 2025-02, limiting its fit.

(c) Other Notes:

(i) Comparison to 2.1: 2.2 (16 pages) expands on DR2.1 (8 pages) with more detail—e.g., complaint maps (slide 8), specific dates (slide 3), and ordinance critique (slide 10)—but both focus on RWB and predate 2025-02.

(ii) Precursor Insight: Highlights noise as a 2023 issue, possibly prompting Ordinance 2025-02, though not directly tied to its first reading.

(4) SPB DOC 2.3: A 16-page slide deck titled *"Red, White & Booze Noise Violations by Kenneth Hysell,"* presented to the St. Pete Beach City Commission on September 11, 2023.

(a) Page 9 (Slide 9): "Property Values"

- (i) Lists data sourced from the Pinellas County Property Appraiser's Office.
- (ii) Shows property values for homes near RWB (5501 Gulf Blvd) - Example: "5485 Gulf Blvd - \$1,200,000 (2023 Market Value)."
- (iii) Lists several nearby properties with values ranging from \$800,000 to \$1,500,000.

The Cascade of Absence :
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(b) Notes: “Noise from RWB impacts property values and quality of life.”

- (i) Suggests a correlation between RWB’s noise and potential property value depreciation or resident dissatisfaction, though no specific data (e.g., value drops) is provided.
- (ii) This slide follows complaint details (slides 3, 6) and precedes ordinance critique (slide 10), framing noise as a broader community issue.

(c) How Property Values Are Being Used:

- (i) **Community Feedback Narrative:** The inclusion of property values ties noise complaints to economic and quality-of-life concerns, amplifying resident feedback (e.g., slide 6’s “can’t sleep” quotes). It implies noise isn’t just a nuisance but a tangible burden on homeowners near RWB.
- (ii) **Policy Justification:** By linking noise to property values, Hysell likely aimed to persuade the commission that noise issues warrant action (e.g., ordinance updates, slide 14), appealing to financial impacts alongside health or peace concerns.
- (iii) **No Direct Evidence:** The slide lists values but doesn’t quantify depreciation (e.g., “noise reduced value by X%”), making it suggestive rather than conclusive—more rhetorical than analytical.

(d) How It Could Not Be Responsive:

- (i) **Not Direct Feedback on Ordinance:** Dated September 2023, it predates Ordinance 2025-02’s first reading (January 2025) and focuses on RWB, not feedback on the ordinance itself or its drafting process.

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- (ii) **Economic, Not Health:** Document request was for "Community Feedback Records," but page 9 leans economic (property values) rather than health-focused feedback, which might align more with "Economic Impact Assessments" (DR3).
- (iii) **Speculative Link:** Lacks data proving noise lowered values, weakening its fit as substantive feedback versus anecdotal concern.

(e) Other Notes:

- (i) **Comparison to DR2.1: DR2.2** (16 pages) adds property value data (slide 9) not in DR2.1 (8 pages), enhancing the economic angle over DR2.1's simpler complaint focus.
 - (ii) **Purpose Insight:** Page 9 uses property values to bolster the noise complaint case, suggesting a community feedback-economic nexus, though not ordinance-specific.
- (5) **SPB DOC 2.4:** A collection of 25 pages of letters (support and opposition) for Case No. 23034, submitted around the Development Review hearing on December 13, 2023, over a year before Ordinance 2025-02's first reading (January 28, 2025). Feedback on a specific development project, not Ordinance 2025-02. Noise is a recurring concern in opposition letters, tied to the proposed restaurant and music.

(a) Key Points:

- (i) Pages 1-10 (Support Letters): Residents and business owners near 7701 Blind Pass Road support the mixed-use project (hotel, restaurant, condos), praising its economic benefits and design. Noise is rarely mentioned; focus is on revitalization.

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(ii) Pages 11-25 (Opposition Letters)

- (A)** Page 12: Resident writes, “Noise from the restaurant and music will disturb our peace,” citing proximity to homes.
- (B)** Page 15: Another notes, “Outdoor seating and amplified music will ruin our quiet neighborhood.”
- (C)** Page 19: Mentions “noise pollution” affecting sleep and property enjoyment, no specific data.
- (D)** Page 23: Opposes due to “noise levels already an issue in the area,” linking to existing venues.

(b) How It Could Not Be Responsive:

- (i) Not Ordinance-Specific:** Dated December 2023, these letters predate Ordinance 2025-02’s drafting and first reading (January 2025).
- (ii) Project-Focused:** Addresses Case No. 23034’s proposed restaurant/music, not the city-wide noise ordinance or existing venues like RWB (unlike DR2.1, DR2.2). It’s narrow feedback, not comprehensive for Ordinance 2025-02.
- (iii) No Health Data:** Mentions noise impacts (e.g., sleep) but lacks health analysis or metrics, limiting its depth as feedback.

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(c) Other Notes:

- (i) Comparison to DR2.1, DR2.2:** Unlike DR2.1 and DR2.2 (RWB-focused), DR2.3 targets a proposed project (7701 Blind Pass Rd), not an existing venue. It's broader in voices (25 letters) but less ordinance-relevant.
- (ii) Noise Theme:** Reinforces noise as a 2023 concern, possibly a precursor to Ordinance 2025-02, though not directly linked.

(6) SPB DOC 2.5: Case No 23034 Submitted Correspondence.pdf, a 7-page collection of emails and letters related to Case No. 23034, the Development Review application for 7701 Blind Pass Road, St. Pete Beach focusing on the proposed mixed-use project (hotel, restaurant, condos). Noise is a recurring opposition theme. November-December 2023—over a year before Ordinance 2025-02's first reading.

(a) Key Points:

- (i) Page 1:** Email dated November 28, 2023, from a resident supporting the project, no noise mention.
- (ii) Page 2:** Email dated December 4, 2023, opposing, stating, "Noise from outdoor music will disrupt our quiet street."
- (iii) Page 3:** Letter dated December 5, 2023, opposing, notes, "Restaurant noise and traffic will ruin our peace."
- (iv) Page 5:** Email dated December 6, 2023, opposing, mentions, "Amplified music will keep us awake," citing sleep concerns.
- (v) Page 7:** Email dated December 7, 2023, supporting, focuses on economic benefits, no noise reference.

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(b) How It Could Not Be Responsive:

- (i) Not Ordinance-Specific:** From late 2023, it predates Ordinance 2025-02's drafting and first reading (January 2025).
- (ii) Project-Specific:** Focuses on Case No. 23034, not the broader scope of Ordinance 2025-02 or existing venues (e.g., RWB in DR2.1, DR2.2). It's limited to one development.
- (iii) No Depth:** Mentions noise impacts but lacks health data or broader analysis, reducing its fit as comprehensive feedback.

(c) Other Notes: 7 vs. 25 Pages: This 7-page version is shorter than DR2.3's 25-page compilation, focusing on select correspondence rather than a full support/opposition set. It might be a subset or a different upload under the same URL.

(7) SPB DOC 5: "2007 PAG Way Noise Surveys through 07012023.pdf,"

- A compilation of noise survey results for 2007 Pag Way, St. Pete Beach.
- Noise measurements over 15 months, likely tied to a venue near 2007 Pag Way, with dB readings, dates, and some complaint notes.
- No explicit reference to Ordinance 2025-02 or enforcement outcomes (e.g., citations, fines).
- April 2022 to July 2023—precedes Ordinance 2025-02's first reading (January 28, 2025).
-

(a) Key Points:

- (i) Page 1:** Cover page listing dates (April 30, 2022, to July 1, 2023) and address (2007 Pag Way).

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- (ii) Pages 2-3:** April 30, 2022, survey—noise levels (e.g., 65-75 dB) measured at property line, noting music from a nearby venue, no ordinance cited.
- (iii) Pages 4-6:** June 15, 2022, survey—levels up to 80 dB, “excessive noise” noted, enforcement action unclear.
- (iv) Pages 7-9:** August 20, 2022—70-85 dB, resident complaint logged, no violation specified.
- (v) Pages 10-12:** October 5, 2022—75-90 dB, “live music” source, no enforcement outcome.
- (vi) Pages 13-15:** March 10, 2023—60-70 dB, quieter night, no action noted.
- (vii) Pages 16-17:** July 1, 2023—80-95 dB, complaint-driven, “potential violation” mentioned, no ordinance or resolution cited.

(b) How It Could Not Be Responsive:

- (i) Pre-Ordinance Timing:** Spanning April 2022 to July 2023, it ends 18 months before Ordinance 2025-02’s first reading (January 2025).
- (ii) No Enforcement Outcome:** While noise levels and complaints are logged (e.g., 80-95 dB on page 16), there’s no clear record of enforcement actions (e.g., citations, fines, compliance orders) under any ordinance, weakening its fit as an “Enforcement Record.”
- (iii) Ordinance Disconnect:** No mention of Ordinance 2025-02 or its decibel standards (assumed stricter, post-2025). These surveys likely relate to the older ordinance, not the one I requested records for.

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(c) Other Notes:

- (i) Comparison to DR2:** Unlike DR2's RWB focus (2023), DR5 targets 2007 Pag Way (2022-2023), suggesting broader noise monitoring, but still pre-2025-02.
- (ii) Enforcement Ambiguity:** High dB readings (e.g., 95 dB, page 16) hint at violations, but no follow-through is documented, limiting its enforcement value.

III. 2nd Round of Documents sent 3/28/2025

These generalized health references do not reflect St. Pete Beach's noise environment or population, reinforcing the absence of tailored health/economic impact studies and supporting an adverse inference.

(8) Agenda Report (January 28, 2025) Prepared By: Becky Vose, City Attorney's Office

(a) Relevance to Claims:

- (i) Health Impacts:** The report asserts a need for noise control to safeguard public health but lacks specific health data or studies to substantiate claims of sleep disturbance, stress-related illnesses, or hearing loss.
- (ii) Property Values:** It suggests that excessive noise may reduce property values, yet provides no economic evidence or studies to support this assertion.
- (iii) Community Feedback:** References resident complaints as a basis for the ordinance but does not include specific feedback, survey data, or complaint logs.
- (iv) Enforcement Needs:** Highlights deficiencies in current standards and proposes a new "plainly audible" standard, but offers no data on past enforcement issues or training readiness.

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(b) Key Quotes and Page Numbers:

- (i) *"The City currently has 2 standards for noise enforcement: decibel-based measurement and loud and raucous standard." (Page 2)*
- (ii) *"Proposed ordinance prohibits excessive noise that is 'Plainly audible at a distance' as a 3rd alternative enforceable noise standard." (Page 3)*
- (iii) *"Objective non-content based standard upheld as constitutional standard by Florida Supreme Court." (Page 3)*

(c) The Agenda Report partially aligns with the Enforcement Needs claim by identifying limitations in existing standards and proposing a new one. However, it fails to provide empirical support for Health Impacts (e.g., no local health studies), Property Values (e.g., no economic data), or Community Feedback (e.g., no detailed resident input). This lack of evidence weakens the ordinance's rational basis under legal scrutiny, such as *Heller v. Doe* (509 U.S. 312), which requires a factual basis for governmental actions. The absence of supporting data supports an adverse inference (*Public Health Trust v. Valcin*, 507 So. 2d 596) that the City lacks the necessary justification for Ordinance 2025-05.

(9) Patrick K. Dooley's Paper: "Enforcing Noise Ordinances in Florida"

(a) Relevance to Claims:

- (i) Health Impacts:** Mentions general noise-related health effects (e.g., sleep interference) but lacks data specific to St. Pete Beach residents.
- (ii) Property Values:** Does not address economic impacts or property values.
- (iii) Community Feedback:** No mention of St. Pete Beach-specific resident input or complaints.
- (iv) Enforcement Needs:** Discusses statewide enforcement challenges, such as lack of training, but does not evaluate St. Pete Beach's enforcement context.

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(b) Key Quotes and Page Numbers:

- (i) *"Most communities in Florida have a noise ordinance or code in one form or another." (Page 1)*
- (ii) *"When a local government chooses to use a performance-based type ordinance, the personnel assigned to the enforcement of the ordinance have very little, or no training in the use of sophisticated measurement equipment." (Page 2)*
- (iii) *"Survey Results from State Attorney's: 100% stated that they received no training in sound measurement." (Page 4)*
- (iv) *"Sleep interference occurs at an average night time sound level of 35db." (Page 5)*

(c) This paper partially supports the Enforcement Needs claim by highlighting training and equipment deficiencies across Florida, suggesting potential challenges for St. Pete Beach. However, its lack of localized data undermines its relevance to Health Impacts (no St. Pete Beach health metrics), Property Values (no economic discussion), and Community Feedback (no local input). The general health reference to sleep interference at 35 dB is insufficient without evidence linking it to St. Pete Beach's noise environment. This gap reinforces the absence of tailored evidence required to justify the ordinance's claims, potentially failing rational basis review (*Heller v. Doe*).

(10)EPA Report: "Information on Levels of Environmental Noise" (1974)

(a) Relevance to Claims:

- (i) Health Impacts:** Provides general noise thresholds for health protection (e.g., sleep and hearing) but is not specific to St. Pete Beach.
- (ii) Property Values:** Does not address economic impacts or property values.
- (iii) Community Feedback:** Lacks community-specific data or feedback from St. Pete Beach.

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(iv) Enforcement Needs: Offers guidance on noise measurement but includes no enforcement data or local applicability.

(b) Key Quotes and Page Numbers:

- (i) "This document has been approved for general availability. It does not constitute a standard, specification, or regulation." (Page 1)*
- (ii) "Taking both the specific language of the Act, cited above, and the legislative history discussed in the foregoing, EPA interprets Section 5(a)(2) as directing the Agency to identify levels based only on health and welfare effects and not on technical feasibility or economic costs." (Page 9)*
- (iii) "Not all of the scientific work that is required for basing such levels of environmental noise on precise objective factors has been completed." (Page 1)*

(c) The EPA report supports the Health Impacts claim with broad noise thresholds, but its 50-year-old, national scope limits its relevance to St. Pete Beach's current conditions. It does not address Property Values, Community Feedback, or Enforcement Needs, and its exclusion of economic and technical feasibility considerations omits critical aspects of ordinance justification (Fla. Stat. § 166.041(4)(a)). The admission of incomplete scientific data further weakens its authority, supporting an adverse inference (Valcin) that the City lacks localized, contemporary evidence to back its claims.

(11) EPA Brochure "The Environmental Frontier: Noise Control"

(a) Relevance to Claims:

- (i) Health Impacts:** Mentions general health effects (e.g., hearing damage, stress) but provides no scientific data or St. Pete Beach-specific evidence.
- (ii) Property Values:** Does not discuss economic impacts or property values.
- (iii) Community Feedback:** References community efforts broadly but lacks St. Pete Beach-specific input.

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(iv) Enforcement Needs: Mentions enforcement programs generally but offers no specific data or local context.

(b) Key Quotes and Page Numbers:

- (i) "If you are interested in learning of specific noise control job opportunities in Federal, state, or local government..." (Page 9)*
- (ii) "Noise is one of the major environmental problems facing our country today" (Page 3)*
- (iii) "It is estimated that at least 20 million Americans are exposed daily to noise that is permanently damaging to their hearing" (Page 3)*

(c) As a recruitment tool from the 1970s, this brochure minimally supports the Health Impacts claim with broad statements, but its lack of scientific backing or local relevance renders it inadequate. It fails to address Property Values, Community Feedback, or Enforcement Needs specific to St. Pete Beach, and its outdated nature (e.g., referencing the Quiet Communities Act of 1978) undermines its applicability to a 2025 ordinance. This document's inclusion suggests a lack of substantive evidence (Valcin), failing to justify the agenda packet's claims.

(12) Noise Ord 2025-05 - with Ex A Markup for first reading

(a) Relevance to Claims:

- (i) Health Impacts:** Asserts noise affects health but lacks empirical studies or local data.
- (ii) Property Values:** Claims noise reduces property values without economic evidence.
- (iii) Community Feedback:** References resident communications but provides no specific data or surveys.

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(iv) Enforcement Needs: Outlines new enforcement methods (e.g., "plainly audible" standard) but lacks data on past enforcement or training readiness.

(b) Key Quotes and Page Numbers:

- (i)** *"It is the public policy of the city that every person is entitled to noise levels that are not detrimental to the life, health, comfort and peace of the city's residents and visitors..." (Page 1)*
- (ii)** *"Residents of the city have the right to have peace and quiet in and about their residences, and be free from excessive noise..." (Page 1)*
- (iii)** *"It is recognized that excessive noise potentially lowers the value of nearby residences." (Page 1)*
- (iv)** *"The City Commission finds these amendments to assist in the preservation and maintenance of the public health, safety, and welfare." (Page 1)*

(c) The ordinance's "Findings of Fact" address all four claims but rely on general assertions rather than evidence. Health Impacts and Property Values lack supporting studies, Community Feedback is vague without specific records, and Enforcement Needs are proposed without data on current deficiencies or implementation capacity. This anecdotal basis fails to meet rational basis standards (*Heller v. Doe*), supporting an adverse inference (*Valcin*) that the City lacks concrete justification for Ordinance 2025-05.

(13) Noise Ord. Presentation Attorney B. Vose

(a) Relevance to Claims

- (i) Health Impacts:** "Excessive noise causes sleep disturbance, stress-related illnesses, and hearing loss, necessitating decibel limits to protect residents (pages 5, 7)."

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- The presentation does not directly address health impacts or provide data to support claims of sleep disturbance, stress-related illnesses, or hearing loss. It focuses on the legal and enforcement aspects of the proposed "plainly audible" standard rather than substantiating health-related justifications. There are no references to scientific studies, local health data (e.g., from the Pinellas County Dept. of Health), or recognized standards linking noise to health effects in St. Pete Beach. This omission fails to support the agenda packet's health impact claim, weakening the ordinance's rational basis under *Heller v. Doe* (509 U.S. 312, 1993), which requires evidence to justify governmental actions.

(ii) Community Feedback: "Numerous resident complaints over recent years demand stricter noise controls (pages 4, 9)."

- The presentation does not include specific community feedback, such as resident complaints, surveys, or public hearing records, to demonstrate a city-wide demand for stricter noise controls. It focuses on the proposed standard and enforcement methods without referencing the volume or nature of resident input. Given that much of the complaint data in the broader document set (e.g., SPB DOC 2.1, 2.2) is RWB-specific and from 2023, the presentation's failure to address broader or more recent feedback (e.g., 2024-2025) suggests a disconnect between the ordinance's city-wide scope and the localized nature of documented complaints. This gap fails to support the agenda packet's claim of widespread community demand.

(iii) Enforcement Needs: "The current ordinance lacks measurable standards, hindering enforcement (pages 5, 10)."

Key Quotes and Page Numbers:

- (A)** "The City currently has 2 standards for noise enforcement: i) Decibel based measurement... ii) Loud and raucous standard - 'any sound that, because of its

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volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities.'

Potential Defenses: subjective and difficult to enforce." (Page 2)

- (B) "Proposed ordinance prohibits excessive noise that is 'Plainly audible at a distance' as a 3rd alternative enforceable noise standard." (Page 3)
- (C) "Objective non-content based standard upheld as constitutional standard by Florida Supreme Court." (Page 3)
- (D) "No person shall permit, cause, allow, or create excessive noise that is plainly audible in a residential location when that residential location is located no less than two hundred (200) feet from the Originating Location or the closest property line of the Originating Property." (Page 5)
- (E) "Investigating officers shall make a determination as to whether a noise is plainly audible, by using the following standards: (1) officer's ordinary auditory senses... (2) The officer must have a direct line of hearing... (3) The officer need not determine the particular words or phrases being produced..." (Page 7)

The presentation directly addresses the Enforcement Needs claim by critiquing the subjectivity of the current "loud and raucous" standard and proposing the "plainly audible" standard as a more objective alternative. It cites legal precedent (likely State v. Catalano, 104 So. 3d 1069, Fla. 2012, correcting the erroneous State v. Ewing citation in other documents) to argue the standard's constitutionality.

However, the "plainly audible" standard itself relies on subjective officer discretion, as noted: "the officer need not determine the particular words or phrases" (Page 7), which could lead to inconsistent enforcement. The presentation also lacks data on past enforcement failures (e.g., citation rates, outcomes) or officer training readiness, undermining its claim of improved enforceability (Siegmeister v. Johnson, 240 So. 3d 70, Fla. 1st DCA 2018). This gap supports an

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adverse inference (Public Health Trust v. Valcin, 507 So. 2d 596, Fla. 1987) that the City lacks evidence of practical enforcement capacity.

(iv) Overbreadth Risk: The ordinance's city-wide, 24/7 application risks overbreadth by applying a uniform standard to diverse areas (e.g., commercial zones like Corey Ave vs. residential zones) without evidence of a city-wide noise problem. The RWB-centric complaint data from 2023 suggests the issue may be venue-specific rather than pervasive, yet the ordinance imposes restrictions on all noise sources, potentially impacting protected activities like live music or outdoor events in commercial areas. This broad scope may disproportionately burden businesses and residents in areas without documented noise issues, violating overbreadth principles (Ashley v. City of Jacksonville). The presentation's failure to address this risk or provide a legal analysis of overbreadth (e.g., First Amendment implications for expressive activities) supports an adverse inference (Valcin) that the City has not evaluated these constitutional concerns.

(v) Lack of Tailoring: The presentation acknowledges the potential for tailoring (e.g., time or location-based restrictions, Page 10) but does not justify the chosen city-wide approach. Under Heller v. Doe, the ordinance must be tailored to avoid undue burdens. The RWB-focused data suggests a narrower solution (e.g., targeted enforcement against RWB) could address the documented issue without a city-wide ordinance, further highlighting the overbreadth risk.

(b) The presentation's lack of legal analysis on overbreadth, combined with the RWB-focused data, supports an adverse inference (Valcin) that the City has not adequately evaluated the ordinance's constitutional risks. This omission could render Ordinance

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2025-05 vulnerable to legal challenges, particularly from businesses in commercial zones where noise (e.g., music, events) is integral to operations.

- (c)** This analysis suggests that Ordinance 2025-05, as presented, may be an overbroad response to a localized issue (RWB complaints, but for only 2023), lacking the city-wide evidence needed to justify its scope.
- (d)** The presentation focuses on Enforcement Needs by introducing the "plainly audible" standard, citing legal precedent (State v. Catalano), but its subjectivity and lack of enforcement readiness data (e.g., training protocols) undermine its practicality (Siegmeister v. Johnson). It does not address Health Impacts, Property Values, or Community Feedback with evidence, leaving these claims unsupported. The absence of implementation details supports an adverse inference (Valcin) that the City is unprepared to enforce the ordinance effectively.

(14) Business Impact Estimate (BIS) - Analysis of St. Pete Beach's Business Impact Estimate (BIE) for Proposed Noise Control Ordinance

The City of St. Pete Beach has provided a BIE for its proposed noise control ordinance, which aims to regulate excessive noise audible at specified distances in residential areas. While the BIE technically addresses each statutory requirement, it does so in a minimal and vague manner.

(a) Analysis of the BIE

- (i) Summary of the Proposed Ordinance:** The BIE for St. Pete Beach's noise control ordinance partially complies with Florida Statute § 166.041(4)(a):
- (ii) Compliant Elements:** Summary, identification of new charges/fees, number of businesses impacted, and additional information sections meet basic requirements.

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(iii) Non-Compliant Elements: Estimates of compliance and regulatory costs lack quantification, failing to fulfill the statute's intent and exposing the ordinance to legal risk.

(A) Estimate of Direct Compliance Costs

- 1. Statutory Requirement:** An estimate of costs businesses may reasonably incur to comply (§ 166.041(4)(a)2.a).
- 2. BIE Content:** The BIE notes that compliance costs "will be based on a variety of factors," ranging from "lowering the volume of noise" to "expenses related to having an acoustical expert design measures." No specific figures, ranges, or methodologies are provided.
- 3. Evaluation:**
 - The term "estimate" implies some quantification. While exact dollar amounts may not be mandatory, the statute's intent—to inform businesses of financial burdens—requires more than vague descriptions.
 - Florida courts emphasize transparency in municipal actions. In *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801 (Fla. 1972), an ordinance was invalidated for insufficient clarity, a principle applicable to the BIE's role in providing actionable data.
 - The absence of cost estimates (e.g., average expenses for soundproofing or expert consultations) limits the BIE's utility.
- 4. Conclusion:** Non-compliant due to lack of quantification.

(B) Estimate of Municipality's Regulatory Costs

- 1. Statutory Requirement:** An estimate of the municipality's enforcement costs, including revenues from new charges or fees (§ 166.041(4)(a)2.c).

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2. BIE Content: The BIE asserts that regulatory costs will not increase "unless there is an uptick in noise violations," with no new fees beyond fines. It offers no cost projections for potential enforcement increases.

3. Evaluation:

- The statute requires an "estimate," implying a projection of potential costs. A conditional statement without data (e.g., historical violation rates or enforcement expenses) is insufficient.
- State v. City of Sunrise, 354 So. 2d 1206 (Fla. 1978), underscores the need for good faith estimates in municipal planning, a standard this BIE does not meet.

4. Conclusion: Non-compliant due to lack of a quantified estimate.

(b) The city therefore has yet to address these deficiencies:

- (i) Unquantified Costs:** No specific estimates (e.g., average cost of noise mitigation per business, ranges for expert services).
- (ii) Limited Scope:** Did not Include all potentially affected businesses (e.g., restaurants, event venues, construction firms).
- (iii) Lack of Detail in Regulatory Costs:** No Estimates for enforcement expenses (e.g., staffing, equipment) and potential fine revenues, using historical data or projections.
- (iv) No Analysis:** Lack of risk and sensitivity analyses to enhance the BIE's utility, even if not strictly required.
- (v)** Without these revisions, the BIE remains substantively deficient, providing little actionable information for businesses and risking legal challenge under Florida precedent.

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- (c) The BIE indirectly relates to Enforcement Needs by noting potential regulatory costs, but its vague cost estimates and focus solely on bars (excluding other businesses) fail to meet Fla. Stat. § 166.041(4)(a) requirements for a detailed economic analysis. It does not address Health Impacts, Property Values, or Community Feedback, and its incomplete scope supports an adverse inference (Valcin) that the City has not fully assessed the ordinance's economic impact, weakening its justification.

(15) Noise Science Health Effects Bibliography

(a) Relevance to Claims:

- (i) Health Impacts:** Lists general health effects (e.g., sleep interference, stress) but lacks St. Pete Beach-specific data.
- (ii) Property Values:** Does not address economic impacts.
- (iii) Community Feedback:** No local feedback included.
- (iv) Enforcement Needs:** No enforcement data or discussion.

(b) Key Quotes and Page Numbers:

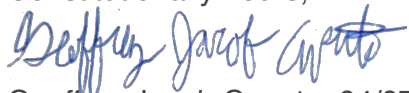
- (i)** "Exposure to loud sounds puts millions of people in the United States and across the globe at risk" (Page 1)
- (ii)** "Sleep interference occurs at an average night time sound level of 35db." (Page 5)
- (iii)** "Unregulated noise has been proven to have serious adverse effects on people far beyond simple annoyance." (Page 5)

- (c)** The bibliography supports the Health Impacts claim with general references but fails to connect these to St. Pete Beach or the ordinance's "plainly audible" standard. Its reliance on outdated sources (e.g., 1974 EPA report) and lack of local data undermine its relevance (Heller v. Doe). It does not address Property Values, Community

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City of St Pete Beach Noise Ordinance Documents Request
PRR2025-22 - Analysis, and Research by Geoffrey J. Caputo, B.F.A. / USF '98

Feedback, or Enforcement Needs, and its broad scope supports an adverse inference (Valcin) that the City lacks current, localized evidence to justify Ordinance 2025-05.

Constitutionally Yours,



Geoffrey Jacob Caputo, 04/07/2025